SHAPING CANADA'S FUTURE TOGETHER

Highlights

Canada

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Highlights

The context

Canadians are living through a period of challenge and opportunity.

The challenge is to redefine Canada's fundamental law – the Constitution – so that we can all feel at home in our own country. The opportunity is to modernize a Constitution first written in the 19th century so that Canada will be better able to respond to the challenges of the 21st century.

The Constitution sets out the present terms of our living together. But many Canadians are not satisfied with those terms, and feel they cannot achieve their hopes within the present constitutional arrangements.

The Constitution also establishes national institutions of government. But many Canadians feel their own parliamentary system of democracy is remote from them and does not respond to their needs.

And in governments, too many bureaucracies, too many regulations and

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too many inefficiencies have been costly and confusing to taxpayers.

The federal proposals are about renewed federalism. They are about governments working together as partners in Confederation – as partners for prosperity. They are about moving decision-making closer to the people, for the unity of Canadians, and their prosperity.

The unity and prosperity of Canadians come down to one issue – building a stronger country. A country where everyone feels at home. That's what the "Canada Round" of constitutional discussions is about, nation building for a new century.

The federal proposals: shaping a future together

The federal proposals, entitled "Shaping Canada's Future Together," consist of three parts.

The first part, "Shared Citizenship and Diversity," deals with Canadian identity and values. The second part, "Responsive Institutions for a Modern Canada," deals primarily with parliamentary reform, notably through an elected, effective and more equitable Senate and revamped rules for the House of Commons. The third part, "Preparing for a More Prosperous Future," proposes better management of the economy and a streamlining of government services, with a view to building a stronger economic union, providing better service to Canadians and getting wasteful bureaucratic overlap out of the system.

Part One, "Shared Citizenship and Diversity," proposes

- reaffirming fundamental freedoms in the Canadian Charter of Rights and Freedoms, including freedom of speech, freedom of the press and freedom of association, and amending the Charter to include property rights. An additional proposal would make it more difficult for governments to override the "Charter rights" of citizens by requiring a 60 percent majority of Parliament or the members of a legislature to invoke the "notwithstanding clause" rather than a simple majority, as at present.
- including an opening section in the Constitution, called a "Canada clause," which would describe what it means to be a Canadian. This statement of vision and values would summarize what our country and our people stand for. This includes our common values,

one of which is respect for diversity.

- recognizing Quebec's distinct society in the Canadian Charter of Rights and Freedoms. Quebec's distinctiveness is an integral part of more than two centuries of Canadian constitutional tradition.

In the Quebec Act of 1774, Quebecers were assured of the right to their language, religion and distinct system of law, which effectively ensured the survival of their language and culture.

These rights were continued exactly 200 years ago in the Constitution Act of 1791, and elaborated again in the British North America Act of 1867, the legal foundation on which Confederation has been built over the last 125 years.

Quebec's distinctiveness is an integral part of Canada's identity. While many aspects of our identity were recognized in the Charter of Rights and Freedoms in 1982 with the entrenchment of aboriginal rights, gender equality rights, and multiculturalism, Quebec's distinctiveness was not included at the time. Now there is an opportunity to correct that omission in a manner which preserves the rights of Canada's official language minorities, English-speaking in Quebec and French-speaking elsewhere in Canada.

- justice for Canada's aboriginal peoples: It is unacceptable that Canada's first peoples, who were here for thousands of years before the arrival of European settlers, should find themselves, centuries later, among the most socially and economically disadvantaged citizens in Canada. Canada's first peoples, who were self-governing before the arrival of the settlers, want nothing more than the means to regain control of their own destiny within Canada.

The aboriginal peoples, through their leadership, have expressed a clear desire for self-government. The federal government is proposing that aboriginal peoples be guaranteed a court-enforceable right to self-government. Over a period of up to 10 years, aboriginal peoples and governments can negotiate self-government agreements. The right to self-government would be included in the Constitution now, to be enforced by the courts after this transition period.

The government is committed to appropriate aboriginal participation in the Canada Round of constitutional

discussions and also proposes that the Constitution include a process for dealing with other aboriginal issues. The government also proposes that aboriginals be represented in a reformed Senate.

Part Two, "Responsive Institutions for a Modern Canada," proposes

- an overhaul of the procedures of the House of Commons to restore its effectiveness as the central body of Canadian democracy. The proposals call for
  - modification of "votes of confidence" rules to allow for more "free votes." More free votes would enable MPs to freely express their convictions and better represent the people;
  - more power for parliamentary committees to amend bills before they become law;
  - more time and greater priority for private members' bills;
  - filling vacancies in the Commons within a specified time period.

- replacement of the appointed Senate by an elected, effective and more equitable Senate.

Election of the new Senate: The government proposes that the Senate be elected at the same time as the House of Commons, with the method of election and the number and distribution of seats to be studied by a Special Joint Committee of Parliament that will be travelling across Canada seeking the views of Canadians on the government's proposals.

Powers of an elected Senate: The government is proposing that

- generally, approval by the Senate be required for bills to become law. However, the Senate would have no legislative role over appropriation bills and measures to raise or borrow money. The Senate would have a six-month suspensive veto over matters of particular national importance such as national defence and international issues;
- there be a double-majority special voting rule on matters of language and culture;
- the Senate have a role in approving the appointment of the Governor of the Bank of Canada and the heads of federal cultural institutions, agencies and regulatory boards.

The Supreme Court: The government is proposing a role for

provinces and territories in filling vacancies in this vital federal institution, which is often the final referee in federal-provincial disputes.

Part Three, "Preparing for a More Prosperous Future," proposes

a new partnership for prosperity. Working together, the federal and provincial governments would contribute to a strengthened economic union, would eliminate barriers to interprovincial trade and would reduce overlapping services.

Among the proposals:

- the common market clause of the Constitution Act, 1867, would be modernized to strengthen the four economic freedoms – the free movement of people, goods, services and capital within the Canadian common market.

This was clearly the intention at the time of Confederation. Article 121 of the 1867 British North America Act (BNA Act) specifies that "all articles of the growth, produce or manufacture of any one of the provinces shall, from and after the Union, be admitted into each of the other provinces."

Such has not proven to be the case, as interprovincial trade barriers and other restrictions on the four freedoms have hampered the development of the economic union and the mobility of Canadians. It is clearly time to modernize this part of our Constitution, to enhance the freedom and prosperity of all Canadians.

- new mechanisms for governments to work more effectively together to manage the economic union. The government is proposing federal legislative power to manage the economic union, in cooperation with the provinces.

- new ways of working with the provinces to provide open and coordinated budget-making processes. The proposals would strip away unnecessary layers of secrecy, and provide for more meaningful consultation.

The government also proposes moving decision making closer to the people to serve Canadians better in the areas of:

- *Training*: The government proposes that labour market training, intimately related as it is to the provincial field of education, should also be an area of exclusive provincial jurisdiction. However,

given the importance of training to Canada's competitiveness and prosperity, it is vital that Canada-wide standards be agreed upon by the federal and provincial governments.

- *Immigration*: The government is prepared to enter into immigration agreements with individual provinces, appropriate to their circumstances.
- *Culture*: The government is prepared to negotiate appropriate cultural agreements with each province. The federal government recognizes, for example, Quebec's special responsibility for the preservation and promotion of the French language and culture.
- *Broadcasting*: The provinces would be consulted on the issuing of new licences and in the nomination of regional commissioners to the Canadian Radio-television and Telecommunications Commission (CRTC).
- *The residual power*: The federal government will reserve exclusively to itself the power of "peace, order and good government" established in the BNA Act. But the government is prepared to transfer to the provinces the residual authority for matters not already assigned to the federal government in the Constitution.
- *Declaratory power*: The government is prepared to eliminate the federal declaratory power that enables it to take over provincial works when it declares them to be for the general advantage of Canada. The declaratory power is a potential irritant to the harmonious functioning of the federation.

As part of moving government closer to the people, the federal government is prepared to confirm exclusive provincial jurisdiction in a number of areas, including forestry and mining, tourism and recreation, housing and municipal affairs. However, the federal government will continue to exercise its responsibilities for international and native affairs. It is also committed to the preservation of Canada's research and development capacity.

The government is also prepared to discuss ways to streamline programs and services and ways to determine what level of government can more efficiently deliver those services. The government is proposing a discussion list of services that can be streamlined, and welcomes all suggestions from the provinces and territories.

The federal spending power: The use of the federal spending power has led to unilateral federal invasion of areas of exclusive provincial jurisdiction. On the other hand, the federal government has responsibilities to all Canadians, particularly in regard to fairness, sharing and maintaining the social safety net.

- The government proposes not to establish new Canada-wide shared cost or conditional programs in areas of exclusive provincial jurisdiction without the approval of seven provinces with 50 percent of the population. Provinces opting out would receive reasonable compensation provided they established their own programs that met the objectives of the Canada-wide program.

- The government proposes establishing a Council of the Federation, composed of representatives of the federal, provincial and territorial governments, that would meet to make decisions on issues of intergovernmental coordination and collaboration.

How we get there

The all-party Special Joint Committee of Parliament co-chaired by Senator Claude Castonguay of Quebec and Dorothy Dobbie, MP, of Manitoba, will travel the country to seek the views of Canadians on the government's proposals.

The committee is to submit its recommendations in February of 1992. The government will subsequently present its formal proposals.

That's the process. Every Canadian has the right, and the responsibility, to participate.

The decisions we take in the next few months will help shape the unity and prosperity of Canadians in this decade, and beyond, in a new century.

It's up to all of us as Canadians to build a renewed federation. After all, it's our Constitution. And our country.

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Points saillants
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Points saillants

Le contexte

Les Canadiens vivent actuellement une période qui pose un grand défi, mais qui offre en même temps une occasion inespérée.

Le défi, c'est de redéfinir le texte juridique fondamental du Canada – la Constitution – pour que nous puissions tous nous sentir chez nous dans notre propre pays. L'occasion inespérée, c'est de moderniser une constitution qui a été rédigée essentiellement au XIX^{e} siècle, afin que le Canada soit en mesure de mieux relever les défis du XXI^{e} siècle.

La Constitution énonce les modalités de notre vie collective. Bien des Canadiens, cependant, ne sont pas satisfaits de l'accord constitutionnel actuel, estimant qu'il ne leur permet pas de réaliser leurs aspirations.

La Constitution établit également les fondements des institutions nationales de gouvernement. Cependant, bien des Canadiens ont l'impression que leur système parlementaire de démocratie est loin

d'eux et qu'il ne répond pas à leurs besoins.

L'administration gouvernementale, entravée par trop de bureaucratie, de réglementation et d'inefficacité, est fort coûteuse et complexe, au point que les contribuables ont peine à s'y retrouver.

Les propositions du gouvernement fédéral visent à renouveler le fédéralisme; à instaurer un partenariat entre les gouvernements de la Confédération; à collaborer à assurer la prospérité du pays et à faire participer les citoyens aux décisions afin d'assurer l'unité du pays et sa prospérité.

L'unité et la prospérité se ramènent à une seule chose : bâtir un pays plus fort. Un pays où chacun puisse se sentir chez soi. L'objet des discussions constitutionnelles de la « ronde Canada », c'est de préparer le pays pour le siècle qui s'annonce.

Les propositions fédérales : bâtir l'avenir ensemble

Les propositions fédérales, intitulées « Bâtir ensemble l'avenir du Canada » comportent trois parties.

La première partie, « Citoyenneté commune et diversité », porte sur l'identité et les valeurs des Canadiens. La deuxième, « Des institutions réceptives au service d'un Canada moderne », traite essentiellement de la réforme parlementaire, notamment d'un Sénat élu, efficace et plus équitable ainsi que d'une refonte du règlement de la Chambre des communes. Dans la troisième, « Préparer un avenir plus prospère », le gouvernement propose d'améliorer la gestion de l'économie et de rationaliser les services gouvernementaux, afin de renforcer l'union économique, de fournir de meilleurs services aux Canadiens et d'éliminer les recoupements et les doubles emplois souvent coûteux.

La partie I, « Citoyenneté commune et diversité », propose de

- Réaffirmer les libertés fondamentales garanties dans la *Charte canadienne des droits et libertés*, notamment la liberté d'expression, la liberté de la presse et la liberté d'association, et ajouter à la Charte le droit à la propriété. Avec les changements proposés, il serait plus difficile pour les gouvernements de passer outre aux droits des citoyens qui sont garantis dans la Charte, car il faudrait, pour invoquer la « clause nonobstant », qu'un

Parlement ou les membres d'un corps législatif recueillent 60 pour 100 des votes plutôt que la majorité simple, comme c'est le cas actuellement.

- Rajouter au début de la Constitution une « clause Canada » qui nous définirait en tant que Canadiens et énoncerait nos aspirations ainsi que nos valeurs communes, notamment le respect de la diversité, que le pays et ses habitants sont prêts à défendre.
- Reconnaître la société distincte du Québec dans la *Charte canadienne des droits et libertés*, car cette différence est reconnue depuis plus de 200 ans dans la Constitution du Canada.

L'*Acte de Québec* de 1774 reconnaît aux Québécois le droit de pratiquer leur religion et de conserver leur langue et leur code civil, assurant de ce fait la survie de leur langue et de leur culture.

Ces droits ont été confirmés il y a exactement 200 ans dans la *Loi constitutionnelle* de 1791, puis précisés de nouveau dans l'*Acte de l'Amérique du Nord britannique* de 1867, qui est le fondement de la Confédération depuis 125 ans.

Le caractère distinct du Québec fait partie de l'identité du Canada. Alors que la *Charte canadienne des droits et libertés* de 1982 témoigne à maints égards de cette identité en reconnaissant les droits des autochtones, l'égalité des droits des deux sexes et le multiculturalisme, le caractère distinct du Québec n'y est cependant pas reconnu. Maintenant, nous avons l'occasion de corriger cette lacune tout en protégeant les droits des minorités de langues officielles du Canada, les anglophones au Québec et les francophones hors Québec.

- Faire justice aux peuples autochtones du Canada : il est inacceptable que les premiers peuples du Canada, qui étaient ici depuis des milliers d'années avant l'arrivée des colons européens, se retrouvent des siècles plus tard parmi les plus désavantagés du Canada sur le plan social et économique. Les premiers peuples du Canada, qui se gouvernaient eux-mêmes avant l'arrivée des colons, ne réclament rien de plus que les moyens de reprendre en main leur destinée à l'intérieur du Canada.

Les peuples autochtones ont exprimé sans équivoque, par la voix de leurs dirigeants, le désir de se

gouverner eux-mêmes. Le gouvernement fédéral propose de reconnaître dans la Constitution le droit des peuples autochtones à l'autonomie gouvernementale, droit qu'ils pourront faire appliquer par les tribunaux. Les peuples autochtones et les gouvernements pourront négocier, sur une période de 10 ans, des ententes à cette fin. Le droit à l'autonomie gouvernementale serait reconnu dans la Constitution dès maintenant, mais serait mis en application par les tribunaux après cette période de transition.

Le gouvernement est déterminé à assurer aux autochtones le rôle qui leur revient dans les discussions de la « ronde Canada » et propose de reconnaître dans la Constitution un mécanisme de négociation pour les autres questions autochtones. Le gouvernement propose aussi d'assurer la représentation des autochtones dans un nouveau Sénat.

La partie II, « Des institutions au service d'un Canada moderne », propose de

- Repenser entièrement la procédure de la Chambre des communes afin de lui rendre toute son efficacité en tant qu'organe principal de la démocratie canadienne, et notamment :
  - modifier les règles concernant les « votes de confiance » de façon à permettre plus de « votes libres », pour que les députés puissent exprimer librement leurs convictions et mieux représenter la population;
  - donner aux comités parlementaires un pouvoir plus étendu pour amender les projets de loi;
  - consacrer plus de temps et accorder une plus grande priorité aux projets de loi présentés par les députés;
  - combler les vacances à la Chambre des communes dans un délai prescrit.

- Remplacer le Sénat, qui est actuellement nommé, par un Sénat élu, efficace et plus équitable.

Élection du nouveau Sénat : Le gouvernement propose que le Sénat soit élu en même temps que la Chambre des communes, le mode d'élection, le nombre et la répartition des sièges devant être étudiés par un comité mixte spécial du Parlement qui parcourra le Canada pour connaître l'opinion des

Canadiens sur les propositions gouvernementales.

Pouvoirs d'un Sénat élu : Le gouvernement fait les propositions qui suivent.

- Que l'approbation du Sénat soit généralement requise avant que les projets de loi ne deviennent loi. Toutefois, le Sénat n'aurait pas de rôle législatif à l'égard des projets de loi de crédits et des mesures de financement, y compris les pouvoirs d'emprunt. Le Sénat aurait cependant un droit de veto suspensif de six mois sur les questions d'une importance nationale particulière, telles que la défense et la politique étrangère.
- Que le nouveau Sénat soit assujetti à la règle spéciale de la majorité double pour les questions de langue et de culture.
- Que le nouveau Sénat ait le pouvoir d'approuver la nomination du gouverneur de la Banque du Canada et celle des dirigeants des institutions culturelles, et des conseils et organismes fédéraux.

La Cour suprême : Le gouvernement propose que les provinces puissent présenter des candidats pour combler les vacances au sein de cette institution fédérale vitale, souvent appelée à trancher les différends fédéraux-provinciaux.

La partie III, « Préparer un avenir plus prospère », propose

d'établir un nouveau partenariat pour assurer la prospérité du pays. Oeuvrant ensemble, les deux ordres de gouvernement renforceraient l'union économique, élimineraient les obstacles au commerce interprovincial et réduiraient les chevauchements de services.

Le gouvernement fédéral fait en outre les propositions qui suivent.

- Moderniser la clause sur le marché commun contenue dans la *Loi constitutionnelle de 1867*, afin de renforcer les quatre libertés économiques : liberté de circulation des personnes, des biens, des services et des capitaux à l'intérieur du marché commun canadien.

Cette intention était d'ailleurs clairement exprimée au moment de la Confédération, car l'article 121 de l'*Acte de l'Amérique du Nord britannique* de 1867 (AANB) précise que « tous articles du crû, en provenance d'une

province ou qui y sont produits ou fabriqués, seront, à dater de l'Union, admis en franchise dans chacune des autres provinces. »

Cela n'a pas été le cas, car des centaines d'obstacles et d'autres restrictions au commerce interprovincial limitent les quatre libertés fondamentales et nuisent au développement économique et à la mobilité des Canadiens. Il est clair que le temps est venu de moderniser cet aspect de notre Constitution afin que tous les Canadiens jouissent d'une plus grande liberté et d'une plus grande prospérité.

- Mettre en place de nouveaux mécanismes pour faire en sorte que les gouvernements travaillent ensemble plus efficacement à administrer l'union économique : le gouvernement propose un pouvoir législatif fédéral lui permettant d'administrer l'union économique en coopération avec les provinces.

- Instaurer de nouveaux modes de collaboration avec les provinces pour assurer des processus budgétaires ouverts et coordonnés. Il s'agirait de se débarrasser d'inutiles obligations au secret et d'assurer une consultation plus valable.

Le gouvernement propose en outre de rapprocher les décideurs et le peuple canadien pour lui offrir des meilleurs services dans les domaines suivants :

- *Formation* – Attribuer aux provinces la compétence de la formation de la main-d'oeuvre, intimement liée à l'éducation, qui est aussi un domaine provincial. Toutefois, étant donné l'importance de la formation pour la compétitivité et la prospérité du Canada, il est vital que le gouvernement fédéral et les gouvernements provinciaux s'entendent sur des normes pour l'ensemble du Canada.
- *Immigration* – Conclure des ententes avec chaque province, selon la situation de chacune.
- *Culture* – Négocier des ententes culturelles appropriées avec les provinces. Le gouvernement fédéral reconnaît, par exemple, la responsabilité particulière du Québec de veiller à la conservation et à la promotion de la langue et de la culture françaises.
- *Radiodiffusion* – Consulter les provinces pour la délivrance de nouveaux permis et pour la

nomination des commissaires régionaux au Conseil de la radiodiffusion et des télécommunications canadiennes (CRTC).

- *Pouvoir résiduel* – Réserver exclusivement au fédéral le pouvoir d'assurer « la paix, l'ordre et le bon gouvernement » institué par l'AANB. Mais le gouvernement fédéral est prêt à transférer aux provinces le pouvoir résiduel pour les matières qui ne lui sont pas déjà attribuées dans la Constitution.
- *Pouvoir déclaratoire* – Renoncer au pouvoir déclaratoire qui lui permet de faire relever de sa compétence des ouvrages provinciaux lorsqu'il juge qu'ils sont dans l'intérêt général du Canada. Le pouvoir déclaratoire pourrait être une cause de friction empêchant le fonctionnement harmonieux de la fédération.

Dans le désir de rapprocher les décideurs des citoyens, le gouvernement est disposé à reconnaître la compétence provinciale exclusive dans un certain nombre de domaines, notamment la foresterie et les mines, le tourisme et les loisirs, le logement et les affaires municipales. Toutefois, le gouvernement fédéral continuera d'assumer ses responsabilités dans les affaires internationales et les questions autochtones. Il s'engage également à conserver la capacité de recherche et développement du Canada.

Le gouvernement est aussi disposé à discuter de la rationalisation des services et de quel niveau de gouvernement peut le mieux en assurer la prestation. Le gouvernement présente une liste des services qui peuvent être rationalisés, et invite les provinces et les territoires à lui faire part de leurs suggestions.

Pouvoir fédéral de dépenser : L'utilisation de ce pouvoir a entraîné l'ingérence unilatérale du gouvernement fédéral dans des domaines de compétence exclusivement provinciale. D'autre part, le gouvernement fédéral a des responsabilités à assumer à l'égard de tous les Canadiens, en matière d'équité, de partage et de sécurité sociale.

- Le gouvernement propose de ne pas créer, sans le consentement de sept provinces représentant 50 pour 100 de la population, de nouveaux programmes nationaux cofinancés, ni de programmes avec droit de retrait dans des domaines de compétence provinciale exclusive. Les provinces qui opteraient pour le

retrait recevraient une indemnisation juste, pourvu qu'elles aient elles-mêmes des programmes qui répondent aux objectifs du programme national.

- Créer un Conseil de la fédération, composé de représentants fédéraux, provinciaux et territoriaux et chargé de trancher les questions de coordination et de collaboration qui intéressent plus d'un gouvernement.

Le processus

Le Comité mixte spécial parlementaire, qui est composé de membres de tous les partis et présidé conjointement par le sénateur Claude Castonguay, du Québec, et par la députée Dorothy Dobbie, du Manitoba, sillonnera le pays pour recueillir les opinions des Canadiens sur les propositions fédérales.

Le Comité doit déposer ses recommandations en février 1992. Le gouvernement présentera plus tard ses propositions officielles.

Voilà pour la question du processus. Tous les Canadiens ont le droit et la responsabilité de participer.

L'unité et la prospérité du pays, durant l'actuelle décennie et au-delà, dépendent des décisions qui seront prises dans les mois à venir.

Il revient à nous tous, Canadiens, de bâtir une fédération renouvelée. Après tout, c'est notre Constitution qui est en jeu. Et l'avenir de notre pays.

Shaping Canada's Future Together

Proposals

Canada

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Preface

Canadians are proud of their land and their shared values and the advantages and opportunities provided by Canadian citizenship. But Canadians are now searching for new arrangements that will serve as a blueprint for the future. We are all searching for change that will enable the country to preserve what is cherished, while growing to meet the demands of a new and competitive world.

Over the past year, the Government of Canada has been developing proposals that would revise the rules that shape the country's political life. Many of those rules are set out in the Constitution, and changing them will require formal amendment. But not all reforms will require amendments to the Constitution. The proposals set out here incorporate both constitutional and non-constitutional change.

These proposals are intended to give focus to a national dialogue. They represent an invitation to all Canadians across this country to participate in a genuine political renewal. The objective of this process is a better and stronger Canada which reflects our true values and allows us to achieve our common goals and objectives while respecting our diversity. These proposals attempt to identify some basic realities and a concept to guide the debate. But the Government is open to any suggestion that will improve the proposals.

A Special Joint Committee of the House of Commons and the Senate has been established to provide Canadians with a way to take part in the renewal process. The process will benefit from broad participation. Provincial task forces have been created and many individual initiatives are under way. The Government's proposals have already benefited from such participation, including the suggestions of thousands of Canadians funnelled through the Citizens' Forum on Canada's Future. Above all, the Government of Canada wants all Canadians to review these proposals and channel their own views and reactions into the process. Over the next five months, Canadians have an unparalleled chance to have their say.

Once Canadians have had their opportunity to respond to these proposals, the Government intends to move forward with determination and resolve to achieve the changes that we must make to shape a stronger and better country and a more prosperous future for all Canadians.

Introduction
Shaping Canada's Future Together

Canada today is a society of freedom, tolerance and compassion.

Our history tells of our achievements. Canada has been home to aboriginal peoples, the first organized societies in North America, for thousands of years. Europeans arrived nearly five centuries ago, followed by peoples from all over the world. They began building settlements that eventually spanned the breadth of a continent. Canada has developed a renowned system of social and health services. Our reputation as a leader in peacekeeping is respected around the world. Our economy is among the most prosperous in the world. We have grown to become a member of the group of the world's seven largest industrialized economies. The land itself, vast and beautiful, is a rich inheritance held in trust for future generations.

These are accomplishments that do justice to the high hopes of the Fathers of Confederation. George-Étienne Cartier expressed his vision in 1867 in the following words:

> I hope that this grand project of Confederation, achieved under the best of circumstances, will produce results that are as satisfying as they are lasting. We sealed our federal pact without bloodshed and without exploitation of the weak by the strong. All it took was fairness, justice and some compromises on both sides.
>
> I hope that if it must be amended, it will not be to narrow the principles of fairness on which it is founded, but rather to enlarge them even more....

Canada's architects in 1867 understood that federalism was the only option for our nation-building. With its two levels of government, federalism combines self-rule with shared rule. It allows diverse communities to be united in one country without suppressing their distinctiveness. Federalism not only gives room to regions or provinces to make decisions in their own areas, but also allows them to achieve objectives in other areas. And our federal system has proven itself both flexible and durable, adapting to our changing needs since Confederation.

The Canada of the late 20th century bears little resemblance to the Dominion created in 1867. Not in the territory it covers, not in its people, not in its economy, not in its culture. Its political institutions and federal system have been preserved in some respects, and transformed in others.

Confederation was brought about in large part through a political bargain between the leaders of two societies: a mainly English-and-Protestant one, and a mainly French-and-Catholic one. The federal structure of 1867 recognized Quebec's right to be different within the economic and political union. The new federal structure, therefore, incorporated specific provisions to recognize the different language, culture and civil law tradition of Quebec. The initial bargain also took into account the special financial and transportation needs of Nova Scotia and New Brunswick, and it opened the door to westward expansion and settlement.

The original four-province Canada has changed significantly over time to create Canada as we know it today. Some claim that the original bargain has not been fully respected. Others, by contrast, think the bargain has not been sufficiently updated to meet changing needs. In fact, the terms of that original political bargain have been significantly altered over the past century and a quarter through changes in governmental practice, judicial interpretation, and formal constitutional amendment. Among amendments, the most far-reaching has unquestionably been the Constitution Act, 1982, which included the Canadian Charter of Rights and Freedoms.

But there are compelling reasons for further constitutional renewal.

Aboriginal Canadians are frustrated by a Constitution that does not fully recognize their special place in the Canadian society. After a major step forward with the entrenchment in the Constitution of aboriginal and treaty rights in 1982, and successful amendment in 1983, the frustration of aboriginal Canadians has grown from the failure of three successive First Ministers' Conferences (1984, 1985, 1987) to entrench the constitutional recognition of their right to self-government.

Canada must also address Quebec's desire for recognition of its distinct nature and for more control over areas that are inherent to that distinctiveness. Quebecers were promised that if they voted "no" in the 1980 referendum on sovereignty, federalism would be renewed. Yet, the constitutional changes made in 1982 were brought about without the consent of the Quebec government and in spite of the overwhelming disapproval of the members of the National Assembly. Efforts to bring Quebec back into Canada's constitutional family under the Meech Lake Accord failed in 1990 when the amendment as approved by all First Ministers did not receive the subsequent ratification of all legislatures, as required by the constitutional amending formula. Both events left many Quebecers feeling rejected by the rest of Canada.

Many Canadians, particularly in the West, but also in the Atlantic provinces, Ontario and the North, have become increasingly critical of the manner in which our federal system has operated. They want political institutions that are more responsive to their wishes. They want a streamlined system of government which minimizes unnecessary overlap, and institutions which encourage integrity rather than confrontation. Canadians from every region want federal institutions that will hear and act on the aspirations of all parts of the country.

Pressures from within have been accompanied by increasing international pressures. Global forces are affecting the sovereignty of states and increasing their interdependence. Even the largest states are proving too small to cope alone with many of their economic, security and environmental problems. But at the same time, there are world-wide pressures to decentralize political decision-making. Canada, like other countries, is tugged in these two different directions at once.

Canada must ensure that it is equipped to deal with the economic challenges of the next century. If we are to maintain our prosperity, ensure a high standard of living for our children, and continue our efforts to reduce the disparities that exist between the regions of Canada — one of the most important and enduring principles of Confederation — we must be prepared to work together more harmoniously and effectively. We must have an economic union that is both modern and truly functional.

The challenge that faces us all, as Canadians, is to build a better federation for the 21st century. It will need to be a federation that reinforces and expresses the many-sided character of Canada itself: a homeland of many peoples including the First Peoples, a land of two linguistic majorities, a land of diverse regions, a free and democratic society, a land which is respectful of differences, a strong economic union, a sharing community providing equality of opportunity and economic security for all its people, an important player on the international stage.

Federalism is the only political system that will respect these characteristics, all of which are embedded in our history and our consciousness. Federalism has important advantages over alternative forms of political union or association. In a country as vast and varied as Canada, it avoids the overcentralization that occurs in unitary systems. It also avoids the disadvantages of a looser association of states, which would be too ineffective to achieve effective common action or the economic redistribution that can address regional disparities.

The challenge today is very much like that in 1867 — to create a federation which can unite Canadians for the achievement of common goals while ensuring room for diversity. The basic objective, therefore, for a revitalized Canadian federation is the effective reconciliation of unity and diversity through a harmonious combination of distinct parts.

Together, Canadians have created a country that is one of the great success stories of the modern world. Canada has its shortcomings, but also great strengths. We can adapt and even, in some fundamental ways, redesign our federal system. We owe it to ourselves and to our children to surmount our present difficulties by reconciling our unity and diversity in a creative and imaginative way.

This is Canada's round. We must complete the process begun with the 1982 amendments to the Constitution, and prepare for the 21st century, building a framework that responds to the aspirations of all Canadians. The foundation is there. Together, we can build a better Canada.

Part I
Shared Citizenship and Diversity

> Canada has been the inspiration of my life. I have had before me...a policy of true Canadianism, of moderation, of conciliation. I have followed it consistently since 1896, and I now appeal with confidence to the whole Canadian people to uphold me in this policy of sound Canadianism which makes for the greatness of our country....
>
> *Sir Wilfrid Laurier, 1911*

Canadian citizenship is an emotional tie, a sense of shared values and commitments to our country. Our shared Canadian citizenship provides a focus for unity that encompasses its parts, and brings our people together.

Being Canadian does not require that we all be alike. Around a core set of shared values, Canadian citizenship accommodates a respect of diversity that enriches us all. Many Canadians have deep loyalties to their own communities — to a language, to a region, to an aboriginal group, to a distinct culture, to Quebec as a distinct society, or to ethnic roots. We may have other ways of defining ourselves — by gender, occupation, religion or political party. But woven through all these is the sense of good fortune which comes from knowing we belong to a great country, from being Canadians.

Canada is a country that believes in freedom, dignity and respect, equality and fair treatment, and an opportunity to participate. It is a country that cares for the disadvantaged, a country that prefers peaceful solutions to disputes. Although we sometimes lose sight of this, we do share essential values as Canadians from coast to coast to coast. These shared values have been described in many ways and in many places over the years. The Canadian Bill of Rights, now over 30 years old, was written to capture many of these shared values — those of dignity, freedom and respect for the individual.

1.1 Shared Values: The Canadian Identity

Over the past year, Canadians have taken the opportunity to speak their minds on the Canadian identity, using platforms which have included the Citizens' Forum on Canada's Future, provincial commissions, and several privately sponsored surveys. Most have spoken in favour of change, expressing their frustration and impatience with the status quo.

But many who spoke to the Citizens' Forum articulated a strong sense of a distinct Canadian identity which sets us apart from any other country. They expressed a sense of deeply felt core values which they believe that all Canadians share: a belief in the need for equality and fairness as guiding principles for our society, a belief in consultation and peaceful dialogue, the importance of accommodation and tolerance, a respect for diversity, the need for compassion and generosity, the value of Canada's natural beauty, and the importance of a national conscience that spurs us to make our contribution to global peace and development.

Canadians have told us that they care deeply about their citizenship. For many, not only the explorers and pioneers, but also recent newcomers to this country, Canada has meant personal freedom, freedom from restrictions and hunger. These newcomers were escaping old oppressions and searching for new possibilities. They knew that in Canada there is room for everyone to breathe.

It is true that this country and its creation have not taken place without pain and suffering. The aboriginal peoples, in particular, have paid a high price for other peoples' search for freedom. Canada has not always been inclusive, and many have been left out of the benefits of citizenship. Yet, despite these gaps which we are only now acknowledging and trying to remedy, Canada remains deeply symbolic of freedom in its broadest sense. Many around the world still long to come to our shores, to share in what we have built. People in other nations continue to risk their lives and sacrifice their security for freedoms that previous generations have already guaranteed for us in this country.

What else does our citizenship mean to us? Not only freedom from oppression, but also the right to participate. Our democratic rights are immensely important to us — so important that we must continually expand and improve them. Even in Canada, democratic rights for women, for aboriginal peoples and for certain ethnic groups have come only after long struggle. We must all remain committed to improving our democracy and to ensuring that all members of society can fully participate in its institutions.

From its beginnings — in democracy, freedom and the rule of law — Canada has developed its own unique way of governing, its own special relationship between citizen and state. Whether out of genius or necessity, the architects of Canada provided a framework which has allowed us to build a country on the basis of what appear increasingly to be universal values — freedom, equality, compassion and community — in a distinctly Canadian way.

1.2 The Rights of Citizenship and the Charter

In 1982, the protection of Canadians' fundamental rights took a significant step forward with the entrenchment of the Canadian Charter of Rights and Freedoms in the Constitution. Our fundamental freedoms were no longer to be found only in conventions and laws that can be changed by Parliament or provincial legislatures. They are now found in the Constitution itself. The Charter ensures that laws restrict freedom as little as is reasonably possible. Freedom and fulfilment of the individual are limited only by the need for all individuals to have the same freedom and all that goes with it.

The Charter contains protections for equality that have struck a special chord with Canadians.

The purpose of equality rights, our Supreme Court has said, is to remedy or prevent discrimination against groups suffering social, political or legal disadvantage. Many groups in our society have faced or continue to face formidable barriers to being included in our society as themselves, for what they are. The physically and mentally disabled, aboriginal peoples, visible minorities, official language minority groups and others face daily challenges not always understood by the rest of society. Equality aims to eliminate the barriers of discrimination. The goal of equality is not to achieve identical treatment; rather, by ridding laws of discriminatory distinctions, equality rights aim at equality of opportunity for disadvantaged individuals or groups. In fact, the Supreme Court has said that the accommodation of differences is the essence of true equality.

In the Canadian experience, it has not been enough to protect only universal individual rights. Here, the Constitution and ordinary laws also protect other rights accorded to individuals as members of certain communities. This accommodation of both types of rights makes our Constitution unique and reflects the Canadian value of equality that accommodates difference. The fact that community rights exist alongside individual rights in our Constitution goes to the very heart of what Canada is all about.

The Government of Canada reaffirms unequivocally its support for rights guaranteed in the Charter. However, the Charter does not guarantee a right to property. *It is, therefore, the view of the Government of Canada that the Canadian Charter of Rights and Freedoms should be amended to guarantee property rights.*

The Charter recognizes that rights are subject to reasonable limits consistent with the values of a free and democratic society. One person's right may occasionally have to be limited when it conflicts with the rights and interests of others or of the community as a whole. The right of free

expression does not justify libel or hate literature. We ask the courts to play a key role in striking these kinds of balances.

Another source of limitation is found in the use of an override provision which was included in the Constitution in 1982, when the Canadian Charter of Rights and Freedoms was entrenched. This override clause is commonly referred to as the "notwithstanding clause" (section 33). This provision allows provincial and federal legislatures to override certain Charter provisions by an act of the legislature, passed by means of a simple majority. The override is effective for five years, at which time it either lapses or is renewed by the legislature in question.

Strong arguments have been made that this override dilutes the guarantee of rights under the Charter, since it allows legislatures to exempt themselves from the scope of many (but not all) rights when they deem it necessary. The contrary argument, advanced by those who insisted upon its inclusion when they supported the Charter in 1982, is that under our parliamentary system it is entirely appropriate that elected representatives, rather than judges, should have the final say on public policy and social needs. The override provision was the result of a political compromise. If it did not exist, judges appointed to the Supreme Court of Canada would be able to determine the scope of all rights, and any limits to public policy.

As a practical matter, the provision for an override will remain in the Constitution, but the Government of Canada believes that resort to its use should be subject to stricter conditions. *It, therefore, proposes that the votes necessary for Parliament or a provincial legislature to invoke the override clause of the Charter be changed from a simple majority to 60 percent of the members of Parliament or the provincial legislature.*

1.3 Recognizing Quebec's Distinctiveness

> I have always contended that if we could agree to have one government and one parliament, legislating for the whole of these peoples, it would be the best...and the strongest system of government we could adopt. But...we found that such a system was impracticable...it would not meet the assent of the people of Lower Canada,...with a different language, nationality and religion from the majority...it was found that any proposition which involved the absorption of the individuality of Lower Canada...would not be received with favour by her people. Therefore, we were forced to the conclusion that we must devise a system of union in which the separate provincial organizations would be in some degree preserved.
>
> *Sir John A. Macdonald, 1865*

To recognize the distinct character of Quebec society is to acknowledge sociological and political reality. In fact, the British Parliament broke with its policies in all other colonies and granted Quebec, through the Quebec Act, 1774, the right to preserve its language, religion, civil rights and seigneurial system — in short, its French way of life — thereby creating a distinct society within Canada. We have had that distinct society for more than 200 years.

This recognition of the distinctiveness of Quebec society, the fruit of Great Britain's political realism, did not go smoothly. In 1867, after the legislative union of Upper and Lower Canada proved impossible, and the ill-conceived plans to assimilate French Canadians under the Union Act, 1840 failed, the country opted for a creative compromise. It adopted a federal system which could reconcile the provinces' (particularly Quebec's) right to be different while joining together to build an economic union and a dynamic transcontinental country which was distinct from the United States.

In order to achieve this goal, it was decided to restore important elements from the Quebec Act at the time of Confederation and provide the French-speaking people of Quebec with the authority to preserve and promote their language and culture within the new federation.

Since 1867, Canada has changed. Regional identities have multiplied and been strengthened, and immigration from around the world has reinforced Canada's multicultural character, both within and outside Quebec.

While proclaiming its openness to the forces of globalization and reaffirming its willingness to guarantee in the Constitution the rights of its Anglophone community and ethnic minorities, Quebec is requesting that the Constitution be modernized to reflect today's reality while respecting the original bargain of Confederation.

Quebec is asking that the Constitution reflect Quebec's distinctiveness as the only society with a majority French language and culture in Canada and in North America.

The Charter of Rights and Freedoms already contains several clauses, notably section 25 on aboriginal rights and section 27 on our multicultural heritage, which recognize the importance of specific components of Canadian society. These clauses are intended as a guide to the interpretation of the scope and limitations of the provisions of the Charter. It is anomalous that, as it stands, the Charter includes no similar clause with respect to Quebec despite the distinctiveness of its society.

The Government of Canada proposes that the Charter of Rights and Freedoms should be interpreted in a manner consistent with the preservation and promotion of a vibrant French-speaking society in Quebec that protects

the quality and influence of French as the expression of its culture and as the primary language of work, instruction, communication, commerce and business in Quebec. A definition is proposed in order to capture the most evident elements of Quebec's distinctiveness.

In addition, in recognition that linguistic duality is a fundamental characteristic of Canada, the Government of Canada believes that the Charter should also be interpreted in a manner consistent with the preservation of the existence of French-speaking Canadians and English-speaking Canadians, both present in all parts of Canada, but the former concentrated in Quebec and the latter concentrated outside Quebec.

1.4 Canada's First Peoples

Long before the arrival of Europeans, the territory which now makes up Canada was home to aboriginal peoples. Aboriginal languages, traditions and cultures grew and developed. The prominent roles aboriginal peoples have played in Canada's history represent a vital part of Canada's identity. Increasingly, the sharing of different perspectives which stem from the contact between aboriginal and non-aboriginal people is seen as a source of richness to be valued, celebrated and preserved in a spirit of mutual respect.

Now more than ever, there is a recognition and an urgency to secure the legitimate place of aboriginal peoples within the Canadian partnership. Although efforts to resolve the complex issues have been marked by many disappointments, progress toward a greater measure of mutual understanding has clearly been made. There is now an opportunity to address these issues and to lay a solid basis for the kind of future to which the first peoples of Canada aspire.

Like all Canadians, aboriginal peoples look to the Constitution for a reflection of their vision of Canada and for a definition of their place within the Canadian federation. The current constitutional process should create conditions that will help aboriginal communities realize their full potential within Canada.

Aboriginal peoples must take part in the process

Section 35.1 of the Constitution Act, 1982 commits governments to the principle that aboriginal peoples will participate in discussions relating to amendments of the provisions of the Constitution of Canada which relate directly to them. The current constitutional debate will deal with matters that directly affect the aboriginal peoples of Canada. As the first peoples to inhabit Canada, aboriginal peoples must have a role in the constitutional process that will determine the future of this country.

The right of aboriginal peoples to self-government should be constitutionally recognized

Aboriginal peoples were self-governing at the time of first contact with European societies. Their powers of self-government, however, have been seriously eroded by the encroachment of non-aboriginal society and more than a century of paternalism under the Indian Act. Self-government within the Canadian federation would eliminate the need for the instruments and methods of federal intervention found in the Indian Act. It would be an important factor in facilitating the maintenance of the distinctiveness and collective rights of the aboriginal peoples.

The Inuit who live in the more remote northern regions of Canada have devoted much of their effort in recent time to complex and comprehensive land claims negotiations. They have pressed for increased political autonomy through the government system and the entrenchment of their right to self-government. They have also pressed for the creation of a Territory of Nunavut as a means of reaching that objective.

The Métis, for their part, have played a prominent role in the development of Canada's West. The Métis have often been characterized as Canada's forgotten people; the Government of Canada is committed to addressing the appropriate roles and responsibilities of governments as they relate to the Métis.

The provincial governments have generally supported the principle of self-government arrangements for aboriginal Canadians. However, the nature and extent of appropriate constitutional recognition has been the subject of considerable debate.

The Government of Canada proposes an amendment to the Constitution to entrench a general justiciable right to aboriginal self-government in order to recognize aboriginal peoples' autonomy over their own affairs within the Canadian federation. As the right would, in the end result, be enforceable by the courts, the Government of Canada proposes that two important steps be taken to provide a framework for the exercise of this right.

First, it will be important to express the nature of the right in terms that guide the courts toward an interpretation of self-government that is consistent with the understanding of both aboriginal and non-aboriginal peoples. For example, such a right would provide for recognition of the differing circumstances and needs of the different aboriginal peoples in Canada and would be exercised within the Canadian constitutional framework, subject to the Canadian Charter of Rights and Freedoms. Many federal and provincial laws of general application would also continue to apply.

Second, even though the general nature of the right would be described in the Constitution, it will be essential to ensure that the relationship between aboriginal and non-aboriginal governments is understood by all. For this reason, and to ensure a smooth transition, *the Government of Canada proposes*:

- *that there be a commitment by governments to negotiate self-government agreements with the aboriginal peoples;*
- *that there be regularly scheduled First Ministers' conferences on this subject;*
- *that the general enforceability of the right be delayed for a period of up to 10 years from the time that the amendment is adopted;*
- *that, during this initial stage, agreements reached in negotiations will proceed and that agreements reached will receive constitutional protection as they are developed.*

After this period of transition, the right to self-government could be enforced on its own. In practice, however, it is expected that the details of the extent and nature of aboriginal jurisdiction will be determined through a process of negotiations with aboriginal communities.

Within the context of the Canadian federation, aboriginal governments would potentially exercise a combination of jurisdictions presently exercised by the federal, provincial and municipal governments, although many federal and provincial laws of general application would continue to apply. Depending on the requirements and circumstances of the aboriginal group in question, jurisdiction of aboriginal governments could potentially encompass a wide range of matters including land and resource use, language and culture, education, policing and administration of justice, health, social development, economic development and community infrastructure.

A constitutional process on aboriginal matters

Since it will not be possible to deal with all the issues on the aboriginal agenda within the time allowed for this process, the Government of Canada believes it would be appropriate to entrench in the Constitution the requirement for a constitutional process to deal with outstanding aboriginal issues within an appropriate time. Ministers and aboriginal leaders should also use this forum to monitor the progress made in the negotiation of self-government agreements.

Representation of aboriginal peoples in the Senate

Some countries have taken special measures to guarantee that their aboriginal peoples are represented in their legislative houses. Aboriginal peoples in Canada have been chronically under-represented in our political

institutions at the federal level. This situation is unacceptable, and must be redressed. *The Government of Canada, therefore, proposes that aboriginal representation should be guaranteed in a reformed Senate.*

1.5 A Constitutional Affirmation of the Canadian Identity

A constitution has two key purposes: one legal, one symbolic. It sets the rules by which a people govern themselves. But it should also convey a sense of why the rules are drafted as they are, what values shape them, what purposes and characteristics identify the people to whom they apply. All Canadians should be able to relate to the description of the qualities that define the country to which they are bound by birth or choice.

As our Constitution stands, that second symbolic component is particularly weak. The preamble to the Constitution Act, 1867 contains an acknowledgement that four provinces desired to come together in a federal union under the name of Canada, with a parliamentary system of government similar in principle to that of the United Kingdom. The Canadian Charter of Rights and Freedoms, which introduces the Constitution Act of 1982, contains a single preambular clause stating that Canada is "founded upon principles that recognize the supremacy of God and the rule of law." Neither one of these preambles contains a full description of who we are as a people and what we aspire to be.

The Government of Canada proposes that a "Canada clause" be added in the body of the Constitution to affirm the identity and aspirations of the people of Canada. The Government of Canada believes that it would be appropriate for the following characteristics and values to be reflected in such a statement that would be entrenched in section 2 of the Constitution Act, 1867:

- a federation whose identity encompasses the characteristics of each province, territory and community;
- the equality of women and men;
- a commitment to fairness, openness and full participation in Canada's citizenship by all people without regard to race, colour, creed, physical or mental disability, or cultural background;
- recognition that the aboriginal peoples were historically self-governing, and recognition of their rights within Canada;
- recognition of the responsibility of governments to preserve Canada's two linguistic majorities and minorities;

- the special responsibility borne by Quebec to preserve and promote its distinct society;

- the contribution to the building of a strong Canada of peoples from many cultures and lands;

- the importance of tolerance for individuals, groups and communities;

- a commitment to the objective of sustainable development in recognition of the importance of the land, the air and the water and our responsibility to preserve and protect the environment for future generations;

- respect for the rights of its citizens and constituent communities as set forth in the Canadian Charter of Rights and Freedoms;

- the free flow of people, goods, services and capital throughout the Canadian economic union and the principle of equality of opportunity throughout Canada;

- a commitment to the well-being of all Canadians;

- a commitment to a democratic parliamentary system of government;

- the balance that is especially Canadian between personal and collective freedom on the one hand and, on the other hand, the personal and collective responsibility that we all share with each other.

Proposals

*1. **Reaffirming the rights and freedoms of citizens**.* The Government of Canada reaffirms the basic rights set out in the Charter as a fundamental feature of the Canadian Constitution. The Government of Canada proposes that the Canadian Charter of Rights and Freedoms be amended to guarantee property rights. The Government of Canada further proposes that the votes necessary for Parliament or a provincial legislature to invoke the override (section 33) be changed from a simple majority to 60 percent of the members of Parliament or the provincial legislature.

*2. **Recognition of Quebec's distinctiveness and Canada's linguistic duality.*** The Government of Canada proposes that a section be included in the Charter stating that the Charter of Rights and Freedoms shall be interpreted in a manner consistent with the recognition of Quebec as a distinct society within Canada. The section would read:

25.1 (1) This Charter shall be interpreted in a manner consistent with

(a) the preservation and promotion of Quebec as a distinct society within Canada; and

(b) the preservation of the existence of French-speaking Canadians, primarily located in Quebec but also present throughout Canada, and English-speaking Canadians, primarily located outside Quebec but also present in Quebec.

(2) For the purposes of subsection (1), "distinct society", in relation to Quebec, includes

(a) a French-speaking majority;
(b) a unique culture; and
(c) a civil law tradition.

(See the Annex on page 14 for excerpts from the Charter: present sections 1, 25, 27, 28 and 31 and proposed section 25.1.)

3. Aboriginal participation in current constitutional deliberations. The Government of Canada is committed to ensuring that aboriginal peoples participate in the current constitutional deliberations.

4. Aboriginal self-government. The Government of Canada proposes an amendment to the Constitution to entrench a general justiciable right to aboriginal self-government within the Canadian federation and subject to the Canadian Charter of Rights and Freedoms, with the nature of the right to self-government described so as to facilitate interpretation of that right by the courts. In order to allow an opportunity for the Government of Canada, the governments of the provinces and the territories, and aboriginal peoples to come to a common understanding of the content of this right, its enforceability would be delayed for a period of up to 10 years. The Special Joint Committee should examine the broad parameters of the right to be entrenched in the Constitution and the jurisdictions that aboriginal governments would exercise.

5. Aboriginal constitutional process. The Government of Canada proposes the entrenchment of a constitutional process to address aboriginal matters that are not dealt with in the current constitutional deliberations and to monitor progress made in the negotiations of self-government agreements.

6. Representation of aboriginal peoples in the Senate. The Government of Canada proposes that aboriginal representation should be guaranteed in a reformed Senate.

7. A Canada clause in the Constitution. The Government of Canada proposes that a "Canada clause" that acknowledges who we are as a people, and who we aspire to be, be entrenched in section 2 of the Constitution Act, 1867. The Government of Canada believes that it would be appropriate for the following characteristics and values to be reflected in such a statement:

- a federation whose identity encompasses the characteristics of each province, territory and community;
- the equality of women and men;
- a commitment to fairness, openness and full participation in Canada's citizenship by all people without regard to race, colour, creed, physical or mental disability, or cultural background;
- recognition that the aboriginal peoples were historically self-governing, and recognition of their rights within Canada;
- recognition of the responsibility of governments to preserve Canada's two linguistic majorities and minorities;
- the special responsibility borne by Quebec to preserve and promote its distinct society;
- the contribution to the building of a strong Canada of peoples from many cultures and lands;
- the importance of tolerance for individuals, groups and communities;
- a commitment to the objective of sustainable development in recognition of the importance of the land, the air and the water and our responsibility to preserve and protect the environment for future generations;
- respect for the rights of its citizens and constituent communities as set forth in the Canadian Charter of Rights and Freedoms;
- the free flow of people, goods, services and capital throughout the Canadian economic union and the principle of equality of opportunity throughout Canada;
- a commitment to the well-being of all Canadians;
- a commitment to a democratic parliamentary system of government;

- the balance that is especially Canadian between personal and collective freedom on the one hand and, on the other hand, the personal and collective responsibility that we all share with each other.

Annex

Recognizing Quebec's Distinctiveness in the Canadian Charter of Rights and Freedoms

The following is the present sections 1, 25, 27, 28 and 31 and the proposed section 25.1:

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

    (a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and

    (b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired. (92)

25.1 (1) This Charter shall be interpreted in a manner consistent with

(a) the preservation and promotion of Quebec as a distinct society within Canada; and

(b) the preservation of the existence of French-speaking Canadians, primarily located in Quebec but also present throughout Canada, and English-speaking Canadians, primarily located outside Quebec but also present in Quebec.

(2) For the purposes of subsection (1), "distinct society", in relation to Quebec, includes

(a) a French-speaking majority;
(b) a unique culture; and
(c) a civil law tradition.

27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

31. Nothing in this Charter extends the legislative powers of any body or authority.

Part II

Responsive Institutions for a Modern Canada

Canada's political institutions must be revitalized. One of the important conclusions of the Citizens' Forum on Canada's Future was that Canadians are increasingly concerned about the effectiveness, fairness and responsiveness of those institutions.

Our objective must be to build upon our parliamentary traditions to produce improved political institutions. These institutions must be democratic; they must be effective; they must be seen by Canadians across the country to represent them fairly and responsively; and they must reflect the diversity of peoples and opinions within the country.

2.1 House of Commons Reform

Many Canadians have become concerned that our parliamentary system is too partisan: that it is weighed too heavily toward conflict, rather than toward cooperation. The abrasive character of adversarial debate in the House of Commons, particularly in Question Period, has undermined parliamentary decorum and the public's confidence in parliamentary institutions and the ability of elected members to focus on their legitimate representational requirements. A loss of confidence in the way the country's political business is conducted has even led to demands for the transfer of legislative power out of the hands of members of Parliament, through the use of referendums and plebiscites.

The Government is confident that Canadians are best served by the democratic election of their representatives on a regular basis, to act on their behalf in a way that reflects both the interests of the voters and the integrity of the people they elect. This is a stable, reasonable and responsible system. The first priority must be to reform rather than by-pass the House of Commons.

While the reform of the House of Commons is important, it is not primarily a matter for federal-provincial deliberations on amendments to the Constitution. Therefore, *the Government of Canada, in cooperation with all parties in the House of Commons, will explore ways and means to strengthen the representational and legislative capacities of individual members of Parliament.* Canadians expect their MPs to have a reasonable measure of

freedom from party discipline to allow them to represent constituency and regional concerns, and to have a meaningful impact on legislation. *The Government will, therefore, develop proposals to enable more free votes.*

Modification of the conventions for non-confidence votes to allow more free votes would be a very important reform. (The loss of a non-confidence vote leads to defeat of a government and its resignation.) Such conventions can be relaxed and party discipline reduced without serious consequences for responsible or effective government. In addition to taxation and supply matters, confidence votes might be restricted to a limited number of bills central to the government's program which would be explicitly identified as confidence measures. In this way, there would be more legislation subjected to "free votes" (in which individual MPs can better represent their constituents by choosing how to vote without having to worry that the government may fall).

Other proposals to be considered include:

- providing more House time and greater priority for private members' bills;
- referring bills to parliamentary committees at an earlier stage — after first reading and before approval in principle at the second reading to give those committees more scope in amending bills; and
- requiring that vacancies in the House of Commons be filled within a specified period, thereby respecting the needs of constituents for representation.

The Government will also explore how the openness and visibility of parliamentary procedures might be improved. At present, much of the independent work by MPs on behalf of their constituents takes place in caucus and in Cabinet. Procedures which allow considerable loosening of party discipline to bring the actions of MPs into the open would help to strengthen the confidence of Canadians in the responsiveness of their representatives.

2.2 Senate Reform

In virtually every federation, the federal legislature is composed of two houses. One is usually a directly elected house, such as the Canadian House of Commons, in which representation is based on population. The second house is designed to give particular weight to regional and minority views in federal policy-making. In many federations, the second house is also elected, in some manner, giving it a claim to democratic legitimacy.

Canada's non-elected Senate is unique among federations. Not surprisingly, there is a long history in Canada of pressure for Senate reform.

This pressure has become particularly acute in recent years as both the Western and the Atlantic provinces have voiced irritation that the House of Commons is dominated by the electoral weight of the more populous provinces.

The impetus for Senate reform stems first and foremost from the conviction held by many Canadians that federal decision-making is not sufficiently responsive to regional diversity. More recently, support for Senate reform has gathered added momentum from public dissatisfaction with the Senate's non-elected character. It has become impossible to reconcile an unelected Senate blocking the legislative will of the elected House of Commons with the demand by Canadians for more democratic and responsive government.

The status quo of federal appointment cannot be sustained. Neither is abolition of the Senate a practical option at this time. Every other successful federation has a representative second chamber in the federal legislature. Abolition would not address chronic concerns about the lack of effective regional representation.

An Elected Senate

The principle that Senators be elected directly by the people reflects the broad consensus among Senate reform proposals that have emerged since the adoption of the Constitution Act in 1982. Therefore, *the Government of Canada proposes a directly elected Senate, designed both to improve regional representation and to increase responsiveness to individuals by strengthening the power of the Canadian electorate through changes to reform the Senate.*

An elected Senate could assume many and quite varied forms. Within this framework, three closely related aspects must be considered: (a) the method of election of Senators, (b) the distribution of Senate seats, and (c) the powers of the Senate.

The Government of Canada proposes that the timing of Senate elections should coincide with elections to the House of Commons. On this basis, the dissolution of the House of Commons would imply the dissolution of the Senate. This would emphasize the federal character of the Senate, and would also recognize the fact that the House of Commons and the Senate share a common legislative agenda.

a) Method of Election

Other federal systems with elected second chambers provide a wide variety of means of selecting their senators, ranging from the same system we use to elect MPs to the House of Commons, to more complex systems

of proportional representation. The Special Joint Committee is asked to consider various options for electing senators on the basis of the following principles:

- The method of election should give expression to the social diversity of the Canadian population, keeping in mind the history of the inadequate political representation of women, aboriginal peoples and ethnic groups.

- As suggested by the Royal Commission on the Economic Union and Development Prospects for Canada (the Macdonald Commission), the size of Senate constituencies should be large enough to allow for proportional representation and, in the larger provinces, numerous enough to represent different regions within the province.

b) Distribution of Senate Seats

Current provincial representation in the Senate displays an outdated historical logic and is no longer acceptable: Ontario and Quebec each have 24 seats, Nova Scotia and New Brunswick each have 10, the four Western provinces and Newfoundland each have 6, Prince Edward Island has 4, and the Yukon and Northwest Territories have 1 each, for a total of 104 seats. The distribution is anomalous in many ways. New Brunswick and Nova Scotia, for example, have greater representation than Alberta and British Columbia, even though the latter provinces have populations which are three to five times greater. Ontario has greater per capita representation in the Senate than has either Alberta or British Columbia.

Although the original distribution of Senate seats was based on the equal representation of the three *regions* of Canada at the time of Confederation — the Maritimes, Quebec and Ontario — the reality of contemporary Canadian politics is that *provinces and territories, and not regions*, are basic to our sense of community and identity.

Provinces should therefore replace regions as the basic units for Senate representation. Furthermore, it is time to reconsider the distribution of Senate seats so that the provinces are more equitably represented. The distribution of Senate seats is a key issue — all reform proposals have dealt with it in some form or another.

The Canada West Foundation has received strong support for its position that an elected Senate should provide the provinces with equal representation. In 1981, the Foundation declared:

> For political purposes, Canada is divided into a number of regions that go under the label of "provinces", and this political reality should be reflected in the equal representation in the Senate of all provinces.... Other federal systems (Australia, the United States, Switzerland) possess upper chambers whose members are drawn

> in equal numbers from each constituent unit, regardless of the differences in population. These systems accept as legitimate the dual nature of the representation that is required in a federal system: the representation of citizens in the national legislative process on the basis of both population and region.

Others have rejected equal representation because of the very large differences in provincial populations. This latter position was supported by the Special Joint Committee of the Senate and the House of Commons on Senate Reform in 1984, in the following terms:

> We therefore concluded that, while providing for substantial over-representation of the less populous provinces and territories, we should propose a distribution that reflects the Canadian reality more accurately than simple numerical equality can do.

The final communiqué of the June 1990 First Ministers' Conference on the Constitution indicated the agreement of all 11 governments that the less populous provinces and territories should be more equitably represented in the Senate. *Therefore, the Government of Canada proposes that the composition of the Senate provide for much more equitable provincial and territorial representation than at present.* The Government of Canada asks the Special Joint Committee to recommend the most appropriate number and distribution of Senate seats to ensure a much more equitable provincial and territorial representation while taking account of:

- Canada's linguistic duality;
- the nearly 80-fold difference in provincial populations;
- the small number of provinces in Canada;
- the need for aboriginal representation; and
- the method of election of the House of Commons.

In so doing, the Committee may wish to examine the experience of other federal systems such as Germany, which provides three seats in the Bundesrat for small Länder (the German version of our provinces), four seats for mid-size Länder, and five seats for the largest Länder. It may also wish to review the specific proposals of the Canada West Foundation for equal representation and those of the Macdonald Royal Commission which proposed an equitable Senate.

c) Powers of the Senate

The Government of Canada's underlying principle in respect of the appropriate powers for a reformed Senate is that the House of Commons should remain the primary legislative body for Canada. The Senate should not, therefore, be a confidence chamber: legislative defeat in the Senate should not lead to the resignation of the Government. The Australian experience in this respect has led to instability and a constitutional crisis and must be avoided. However, an elected upper house must have real powers to be effective and provide the necessary regional balance to Canada's Parliamentary institutions.

For this reason, the Government of Canada believes that, as a general rule, in order for measures to become law, approval of both the Senate and the House of Commons should be required as at present.

For matters of language and culture, the Government of Canada proposes that the Senate also have a double majority special voting rule. This was recommended by the Alberta Legislative Committee in 1985 and the Government of Newfoundland and Labrador in 1989.

The Senate should, however, not be able to override the House of Commons in relation to matters of particular national importance, such as national defence and international issues. In these cases, the Government of Canada proposes that the Senate have a six-month suspensive veto, following the expiry of which the House of Commons would be required to repass the legislation for it to become law.

Since the Senate would not be a confidence chamber, the Government proposes that the Senate have no legislative role in relation to appropriation bills and measures to raise funds including borrowing authorities.

Only the House of Commons will be a confidence chamber under these proposals.

It is the view of the Government of Canada that a reformed Senate should also continue the practice of undertaking special inquiries as it has done in the past (for example, the Report of the Special Senate Committee on Poverty, "Poverty in Canada"; and the Report of the Special Senate Committee on Retirement Age Policies, "Retirement without Tears") to provide the Government with valuable input into issues of public policy. Also, Senators should continue to be allowed to sit in the federal Cabinet to ensure adequate regional representation in the Cabinet.

The overall objective of Senate reform should be one of balance: creating an elected Senate with sufficient powers and legitimacy to meet the challenge of effective representation, while at the same time maintaining the present relationship of the Cabinet to the House of Commons. This balance can be found. In this respect, the Government of Canada expects that the

Special Joint Committee will ensure that Senate reform issues receive full consideration in its hearings across the country.

Ratification of Appointments

Canadians want a more open form of government and more responsive institutions generally, with an increased capacity for federal decision-making to respond to regional interests and sensitivities. In making appointments to regulatory boards and agencies, the Government of Canada has a responsibility to ensure the appropriate representation of women, visible minorities, language groups, aboriginal peoples, and the disabled, as well as to ensure that regional interests are represented. *For this reason, the Government of Canada proposes that the Senate should have a mandate to ratify the appointment of the Governor of the Bank of Canada and the appointments of the heads of national cultural institutions,* such as the Canadian Broadcasting Corporation, the National Film Board, the National Library, the National Archives, the national museums, the Canadian Film Development Corporation, the Canada Council, and the National Arts Centre; *as well as the heads of regulatory boards and agencies,* such as the National Energy Board, the National Transportation Agency, the Canadian Radio-televison and Telecommunications Commission, the Immigration and Refugee Board, and the proposed Canadian Environmental Assessment Agency.

2.3 The Supreme Court of Canada

The Supreme Court of Canada plays an important constitutional role with respect to disputes between federal and provincial governments over the distribution of powers under the Constitution, and with respect to the adjudication of cases involving the Canadian Charter of Rights and Freedoms. At present, the Court is the creature of a federal statute which specifies its composition and jurisdiction. The Supreme Court Act ensures that at least three of the nine Supreme Court justices appointed are from the Quebec bar, the only province with a civil law system. Three justices usually come from Ontario, two from the West and one from Atlantic Canada. There is, currently, no requirement for the federal government to consult with the provinces.

The Meech Lake Accord had proposed to entrench the Supreme Court and its existing composition in the Constitution. Such an amendment would require the unanimous consent of the Parliament of Canada and all 10 provincial legislatures. The Government continues to support these Meech Lake Accord proposals and would be prepared to recommend them if it were found desirable to proceed with any unanimity items in the final package.

Amending the Constitution to provide for a provincial and territorial role in the appointment process does not require unanimity. Therefore, *the Government of Canada proposes a constitutional amendment through which Supreme Court vacancies would be dealt with in the following manner:*

- the Minister of Justice would ask the appropriate Minister(s) of Justice and Attorney(s) General to submit a list of five nominees within 90 days; and

- the Government of Canada would appoint justice(s) acceptable to the Queen's Privy Council of Canada from those lists.

If names are not submitted within the specified time period, the Government of Canada would be able to proceed on its own to nominate a Supreme Court justice.

2.4 The Constitutional Amending Formula

The formula for amending the Constitution itself is a key issue on the constitutional agenda. Conferences of First Ministers were held from 1927 to 1981 — for over 50 years — to find a procedure to amend Canada's Constitution and permit its patriation. Full agreement eluded First Ministers. Agreement among the Prime Minister and nine premiers was achieved in November 1981 on a patriation package that included an amendment procedure, but the Government of Quebec — representing over a quarter of the population of Canada — was not a party to the agreement. The National Assembly of Quebec subsequently rejected the agreement. Although now legally bound by the Constitution Act, 1982, Quebec continues to challenge that Act's political legitimacy because it altered the constitutional powers of the Quebec National Assembly without the latter's consent.

It was to address this issue of legitimacy and to ensure that Quebec once again became an active partner in pursuing Canada's constitutional evolution that the Meech Lake Accord was negotiated. The Meech Lake Accord would have made two changes to the amending formula now in place:

- the unanimous support of Parliament and the legislative assemblies of all the provinces would have been required for amendment of a number of additional matters, such as Senate reform and the creation of new provinces, which currently require the consent of Parliament and two thirds of the legislative assemblies for amendment; and

- compensation would have been provided to a province opting out of any amendment transferring provincial legislative powers to Parliament.

These two changes to the existing amendment procedure were unanimously supported by all First Ministers in April 1987 and in June 1990.

Following the failure of the Meech Lake Accord, the Government established the Beaudoin-Edwards Special Joint Committee to review the issue. That Committee recommended a new amending formula which would require the consent of Parliament and the legislative assemblies of Ontario, Quebec, at least two Atlantic provinces and at least two Western provinces, representing at least 50 percent of the population of these regions, for most major amendments. This recommendation has failed to attract the unanimous support which would be required to change the amending formula.

Most of the constitutional proposals set out in this document — including Senate reform — could be enacted with the support of seven provinces representing 50 percent of the population. This is not the case with the amending formula. Nevertheless, the Government of Canada continues to support the proposal for amending Canada's Constitution included in the Meech Lake Accord. The Government would be prepared to proceed with this proposal if a consensus on this matter were to develop over the course of the next five months; if the accession of existing territories to provincehood were to proceed on the basis of the current amending formula; and if it were found desirable to proceed ultimately with any unanimity items in the final package.

Proposals

*8. **House of Commons.*** The Government of Canada commits itself to a process of further parliamentary reform to give individual MPs more free votes and to reduce the application of votes of confidence.

*9. **Principles of Senate reform: an elected, effective and more equitable Senate**.* The Government of Canada proposes that:

- the Senate be directly elected;
- Senate elections coincide with elections to the House of Commons;
- the Senate's composition provide for much more equitable provincial and territorial representation than at present;
- the House of Commons remain the primary legislative body;
- as a general rule, in order for measures to become law, approval of both the Senate and the House of Commons should be required as at present;

- for matters of language and culture, the Senate would also have a double majority special voting rule;

- for matters of national importance, such as national defence and international issues, the Senate would have a six-month suspensive veto. Following expiry of the suspensive veto, the House of Commons would be required to repass the legislation for it to become law;

- since the Senate is not a confidence chamber, the Senate would have no legislative role in relation to appropriation bills and measures to raise funds including borrowing authorities;

- guaranteed representation be provided for aboriginal Canadians in the Senate;

- the Senate continue to have a mandate to conduct special inquiries into issues of public policy.

10. Details of Senate reform. The Government of Canada proposes that the Special Joint Committee of Parliament consider the following issues:

- the form of direct election to the Senate;

- the appropriate number and distribution of Senate seats;

- in consultation with the aboriginal peoples, the appropriate representation of Canada's First Peoples.

11. Senate Ratification of Appointments to Regulatory Boards and Agencies. The Government of Canada proposes that the Senate be given a mandate to ratify the appointment of the Governor of the Bank of Canada and the appointments of the heads of national cultural institutions, such as the Canadian Broadcasting Corporation, the National Film Board, the National Library, the National Archives, the national museums, the Canadian Film Development Corporation, the Canada Council and the National Arts Centre, as well as the heads of regulatory boards and agencies such as the National Energy Board, the National Transportation Agency, the Canadian Radio-television and Telecommunications Commission, the Immigration and Refugee Board, and the proposed Canadian Environmental Assessment Agency.

12. Appointments to the Supreme Court of Canada. The Government of Canada will introduce a constitutional amendment to provide for a role for the provinces and the territories in Supreme Court appointments whereby appointments would be made by the federal government from lists of nominees submitted by provincial and territorial governments, the individual appointed being acceptable to the Queen's Privy Council of Canada.

In addition, the Government of Canada would be prepared to proceed with the entrenchment in the Constitution of the Supreme Court and its composition if it were found desirable to proceed with any unanimity items in the final package.

13. The Constitutional Amending Formula. The Government of Canada would be prepared to proceed with changes to the amending formula as specified in the Meech Lake Accord if a consensus on this matter were to develop; if the accession of existing territories to provincehood were to proceed on the basis of the current amending formula; and if it were found desirable to proceed ultimately with any items requiring unanimous consent in the final package.

Part III

Preparing for a more Prosperous Future

The Canadian federation has proven very flexible in adapting to change. Nevertheless, it is time to consider some improvements to the way we govern ourselves and to the way governments manage their affairs so we may better reflect the realities of modern-day Canada.

Many elements of the Canadian federation need not be changed. The federal government will continue to ensure that all Canadians have equal access to the entitlements of their citizenship. This includes the redistribution of resources in the form of equalization payments — an obligation of the federal government written into the Constitution under section 36. Section 36 also commits both the federal and provincial governments to promote equal opportunities for the well-being of Canadians, to further economic development, to reduce disparities in opportunity, and to provide essential public services of reasonable quality to all Canadians.

Also important to Canadians is the income security system. By making direct payments to Canadians, such as pensions and family allowances, and by supporting the welfare system managed by the provinces, the federal government plays a critical role in ensuring the well-being of all Canadians. The Government of Canada recognizes that its ability to mitigate the effects of regional economic disparities through these instruments is of particular importance to Atlantic Canada. The federal government will continue to promote economic development initiatives across the country so that Canadians in all regions have the opportunity to live and work within their own communities, and to maintain a satisfying quality of life for their families.

The Government of Canada will maintain its ability to ensure that all Canadians continue to receive the benefits of Canadian citizenship, regardless of where they live or what they do. We are bound together as a society by our belief in the fundamental obligation to share our wealth with our fellow Canadians. The federal government will continue to support this principle in the future, as it does today.

However, the Government of Canada is of the view that change is required in a number of important areas to ensure Canada's future prosperity and to serve Canadians better. Specifically, the Government will address issues related to the management of the economic union, the distribution of some powers between the federal and provincial governments, and the way governments work together. The following criteria underlie the proposals for change in these areas:

- *Canadian goals.* The federal government must be able to express the Canadian identity and achieve common Canadian goals.

- *Respect for diversity.* Federalism reconciles the need for certain strong common powers with the ability to accommodate and reflect different regional needs and objectives in other areas. These different needs and objectives should be pursued by the provinces.

- *Simplicity.* Government should be kept as close to the people as feasible. This is what has been described in the European Community as the principle of "subsidiarity." The federal government should be involved where there is a need for a common policy or where its assumption of the responsibilities would enhance efficiency.

- *Shared responsibility.* There are areas in which neither the federal government nor the provincial governments can act alone to achieve shared goals. In these cases, a joint federal-provincial effort to manage interdependence in the interests of all Canadians is essential.

3.1 A Stronger Economic Union

One of the principal driving forces behind Confederation more than a century ago was the vision that for certain matters more could be accomplished together than apart: that Canada could provide a better future for its citizens as one country. And in that one country there could be respect for diversity embodied in strong provinces. The provinces that joined together to form that country formed a political union, but also an important economic union.

The world has changed a great deal since 1867. Canada faces a rapidly changing and increasingly competitive international economy. Canada is not insulated from these forces. To ensure our future well-being and prosperity, we must create opportunities for our economy to adjust and grow in a manner which will enhance our capacity to compete in the global world economy. It is evident that individual Canadians will be key to this response as entrepreneurship, knowledge and technology determine the cutting edge of competitiveness.

Some things have not changed since 1867. In fact, the benefits of economic integration that brought us together are even more compelling now in the face of recent and ongoing continental and global economic change. And, the ultimate goal of any country is still, and always will be, to provide a better future for its citizens and their children by ensuring their economic security and well-being.

The prosperity that Canadians enjoy today is the proof of the benefits that are attainable. Canada has the second-highest standard of living among the major industrialized nations. From 1961 to 1990, Canada's rate of economic growth was second only to Japan's among the world's seven

largest economies. Over the same period, Canada has had the fastest rate of growth of employment — of jobs created.

But these figures mask some real challenges to our prosperity: the rate of growth of Canada's productivity has slowed in recent years; one-third of young Canadians drop out without even finishing high school; illiteracy rates are high; and investment in research and development by Canadian industry is lower than in other leading industrial countries. Our past performance is no guarantee for the future. Canada must ensure that it has the tools in place to ensure that future generations also enjoy the high standard of living that we have today. *To prosper we must change*. We must improve the way we manage our economic problems and opportunities. We must do a better job of integrating economic activity and our concerns about the environment.

Canada could not continue to provide the same level of economic benefits without the political union of its provinces. Effective economic integration requires political integration. There are real benefits from having access to a larger market, guaranteed access to inputs, access to new technology and the ability to share risk.

Federalism has allowed Canadians to benefit from an economic and political union which has provided not only for a common currency and banking system, the mobility of factors of production between the provinces, and a common financial market, but also for a highly developed network of social programs, and a regime to share the country's wealth among its regions and people. At the same time, federalism has accommodated different regional needs and objectives in other matters.

While the process of amending the Constitution may seem somewhat removed from the daily lives of Canadians who are concerned about their jobs, and jobs for their children, this process provides an opportunity to take actions to strengthen our economic union. We must enhance the operation of our internal market. We must improve the harmonization and coordination of economic policies. Governments must work together better on behalf of Canadians to ensure a better future for all Canadians.

Enhancing Trade and Mobility within Canada

A strong and well-functioning domestic market is essential to the well-being of all Canadians. Existing barriers to the mobility of people, goods, services and capital within Canada impede trade among the provinces and limit the mobility of individual Canadians. The inability of Canadians to benefit fully from the advantages of an internal market weakens their ability to compete effectively in the global economy.

The Constitution Act, 1867 contains a section (section 121) referred to as the "common market clause," which was put in place at the time of Confederation to prohibit barriers to trade. Section 121 stipulates that goods

from any province shall be admitted freely into the other provinces. *This clause does not reflect the realities of today's marketplace.* It does not mention the mobility of capital or of services. It does not provide for the full mobility of people which not only is important to the operation of the economic union, but is a basic right of all Canadians.

In order to ensure that people, goods, capital and services can move freely within Canada, *the Government of Canada proposes that section 121 of the Constitution be modernized to enhance the mobility of persons, capital, services and goods within Canada by prohibiting any laws, programs or practices of the federal or provincial governments that constitute barriers or restrictions to such mobility.* This would provide all Canadians with the right to pursue the livelihood of their choice and economic opportunities wherever they choose to do so in Canada. The Government of Canada further proposes that the new section 121 would come into force on July 1, 1995, in order to allow for a period of transition and adjustment to the elimination of these barriers.

This proposal should not delay current efforts to eliminate interprovincial barriers to trade. Federal and provincial governments should pursue their efforts to dismantle these barriers. A process should be adopted as soon as possible which would commit governments to eliminating barriers within the internal market at the earliest possible date.

There may be some situations in which overriding interests or considerations would preclude governments from eliminating a barrier. In recognition of this, *the amendment proposed to section 121 allows for exceptions for reasons of national interest, and would not apply to legislation promoting regional development or equalization. The Special Joint Committee should consider whether other exceptions to the proposed section 121 would be appropriate.*

Strengthening the Economic Union

The proposed amendment to section 121 would not eliminate all problems in Canada's internal market. Governments would still have to play a leadership role to ensure the effective operation of the internal market and a strong economic union.

Both federal and provincial governments have a role to play in the management of the economic union. Accordingly, while the federal government should have the necessary authority to manage the economic union, that authority should not be unfettered. The challenge is one of shared responsibility; the response is one of intergovernmental collaboration and consultation.

The Government of Canada, therefore, proposes that the Constitution be amended to provide Parliament with a new power to make laws for the

efficient functioning of the economic union. Since the management of the economic union is an area of shared responsibility, *federal legislation under this new power could not be enacted without the approval of at least seven of the provinces representing 50 percent of the population.*

Once approved, the law would be binding on all provinces and the federal government. *However, a province which did not support the legislation (up to three according to the decision-making rules) could opt out of the federal law for three years by passing a resolution with the support of 60 percent of the members of the provincial legislature.* The federal law would then not apply in that province. *The Government of Canada proposes that the Special Joint Committee should consider whether the opting-out provision should be renewable.*

Since this new power would provide a mechanism for shared management of the economic union by the federal and provincial governments, its entrenchment would allow for the transfer and/or decentralization of powers and responsibilities in a number of specific sectors to bring decision-making closer to the people.

This new power will help Canada prepare for the future and face the challenges of the 21st century. It will provide a mechanism for the establishment of Canadian objectives, norms and standards in a number of areas essential to the efficient operation of the economic union.

Similarly, this new power can also help strengthen Canada's financial sector, to enhance the functioning of the economic union. The Government of Canada will work actively with the provinces in this area to clarify responsibilities. In this respect, the Government intends to address the issue of overlap and duplication in the regulation of trust companies. The federal government will also work closely with the provinces to develop more efficient and better coordinated corporate securities regulation which will be essential in an international environment where unnecessary duplication risks business going elsewhere. It will also be important for Canada to have a more effective presence in international groups dealing with securities matters.

Harmonizing Economic Policies

The effective fiscal policy coordination of all Canadian governments is important to the long-term growth prospects of Canada's economy and to the future prosperity of all Canadians.

Federal and provincial governments each pursue their own spending and tax policies to improve standards of living, to reduce unemployment and to control inflation. Since the end of the Second World War, provincial spending and tax policies and their impact on the management of the economic union have increased dramatically. This has increased the risk that

the tax and spending policies of the provinces and those of the federal government may operate at cross purposes. This conflict can reduce the growth of the economy and affect an individual's standard of living. Such divergence in federal and provincial policies also complicates the task of maintaining an effective national monetary policy, which is the other major instrument used to achieve economic objectives.

Through its participation in international organizations like the Organization for Economic Cooperation and Development (OECD) and the International Monetary Fund (IMF), Canada is committed to coordinating its economic policies with those of the other large industrialized countries to strengthen the growth of the world economy from which all of our individual economies benefit. While such coordination is important to provide a sound basis for long-term prosperity, there is no mechanism within Canada to ensure that the economic policies of the federal and provincial governments are coordinated.

Fiscal coordination would be greatly facilitated by making the budget processes of the federal and provincial governments more open and visible. Certainly this has been the experience of other federations which have developed procedures to share information and consult with each other in the development of their annual budgets without compromising necessary safeguards against the improper exploitation of the process. *The Government of Canada, therefore, proposes to develop with the provinces an annual timetable to allow for more open and visible federal and provincial budget-making processes that would include:*

- *a relatively fixed annual budget cycle;*
- *a fixed annual schedule of Finance Ministers' meetings;*
- *the publication by the 11 governments of pre-budget economic/fiscal outlooks; and*
- *common accounting conventions.*

The Government of Canada proposes to develop, with the provinces, guidelines to improve the coordination of fiscal policies and the harmonization of fiscal policies with Canada's monetary policy. Once developed, the guidelines would be set in federal legislation under the new economic union power. Accordingly, these guidelines would require the approval of at least seven of the provinces representing 50 percent of the population, and up to three provinces could opt out.

The Government of Canada also proposes to discuss with the provinces the establishment of an independent agency to monitor and evaluate the macroeconomic policies of the federal and provincial governments. Such an agency could perform a role for Canadian governments not dissimilar to that performed by the OECD and the IMF for their members. The monitoring function would furnish an indispensable information base that would be publicly available to assist the task of policy coordination and harmonization.

In order to improve the harmonization between monetary policy and the fiscal policies of the different levels of government, *the Government of Canada proposes to amend the Bank of Canada Act to make it clear that the mandate of the Bank is to achieve and preserve price stability.* To ensure regional representation on the Board of Directors of the Bank of Canada, *the Government will solicit the views of provincial and territorial governments and consult with them before making appointments to the Board. In addition, the Government proposes to create regional consultative panels to advise the Directors of the Bank on regional economic conditions. The Government will also solicit the views of provincial and territorial governments with respect to the membership of the regional panels. Moreover, as discussed above, the appointment of the Governor of the Bank of Canada would be subject to Senate ratification.*

3.2 Serving Canadians Better

In a number of areas, Canadians would be better served if decision-making were brought closer to the people. Federalism provides governments with this ability to pursue different regional needs and objectives in some areas while pursuing common objectives in others.

The Government of Canada is of the view that there is a need to adjust the distribution of powers between federal and provincial governments in certain areas and to clarify the responsibilities of each level in other areas. There are areas which were not mentioned in the 1867 Constitution. Others have been the subject of debate between governments for many years. It is important for governments to respect each others' jurisdictions and responsibilities even if few areas can be perfectly compartmentalized in a rapidly changing global environment. To serve Canadians better and to avoid costly and disruptive overlap and duplication, governments must better respect the division of responsibilities. This is particularly critical in areas where both the federal and provincial governments have roles to play.

Change is not proposed for the sake of change: sectors that function well should not be adjusted. Change is only proposed when it will improve the service or program Canadians receive.

There are various avenues available to adjust and to clarify responsibilities — some constitutional, some administrative. In cases where jurisdictions are not defined, the Constitution can be amended to make them explicit. In areas where both levels of government have a legitimate role, the different responsibilities of the levels of government can be clarified in bilateral agreements. Such agreements can be entrenched in the Constitution to guarantee their permanence. All these options will be contemplated in the proposals that follow.

1. Labour Market Training

Labour market training is key to Canada's future prosperity. Training is also important to a worker's mobility within the country. It is essential for businesses that depend increasingly on a highly skilled labour force to gain and maintain a competitive edge. Therefore, the federal and provincial governments, employers and employees all have a direct interest in this field. In fact, an enhanced private sector role in training and standard-setting will be critical to Canada's future competitiveness. In the future, training will require full partnership of all the players in the economy.

Skills training for the labour market is intimately related to the educational system, which is an area of exclusive provincial jurisdiction. It is also a program area that should be delivered on a local basis. *The Government of Canada, therefore, proposes a constitutional amendment to recognize explicitly that labour market training is an area of exclusive provincial jurisdiction.*

Given the importance of training to Canada's international competitiveness and future prosperity, leadership in the area of skills standards should be exercised jointly by the federal and provincial governments through the new head of power for managing the economic union. Setting standards and objectives will be essential to develop an internationally competitive labour force and to preserve and enhance the mobility of individuals within Canada.

2. Immigration

Immigration is one of the few areas of formal concurrent jurisdiction between federal and provincial governments which is defined in the Constitution. Provision for concurrency was put into the Constitution Act, 1867, with the stipulation that the federal government had paramountcy in cases of conflict.

The Government of Canada must maintain responsibility for providing citizenship and citizenship services, and for establishing the total number of immigrants and national standards and objectives related to immigration. *Within this framework, the Government of Canada is prepared to negotiate with all provinces bilateral agreements appropriate to the circumstances of each.* An agreement which respects both federal and provincial interests has already been concluded with Quebec, and negotiations are under way with other provincial governments. In addition, to ensure greater security for these agreements, *the Government of Canada proposes to constitutionalize the agreement with the province of Quebec, and any other agreements that are negotiated.*

3. *Culture*

Canada's national identity reflects the coming together of rich cultural histories and traditions rooted in the very history and beginnings of the Canadian people.

The duality of Canada's cultural milieux has contributed to the country's richness and diversity. Our identity is enriched by two very different but intensely vibrant cultural realities and strengthened greatly by the aboriginal cultures that preceded them and by the many diverse multicultural experiences and traditions more recently added to the cultural reality of Canada.

Our challenge, therefore, is to ensure, on the one hand, the maintenance of important Canada-wide institutions that help us promote our identity. On the other hand, Canada's cultural policies and jurisdictions must offer the flexibility of ensuring that the roots of culture are enhanced and enriched — and that there are no impediments to provincial governments playing the roles they deem appropriate in the cultural field.

Views on the appropriate roles for governments in this area may vary widely, and the current sharing of responsibilities between federal and provincial governments may be appropriate in most provinces. However, language and culture have always been the clearest expression of the distinctiveness of Quebec society. And the Government of Quebec, as the only senior government in North America representing a population which is predominantly French-speaking, has special responsibilities for the preservation and promotion of Quebec's cultural identity because of the intense pressures that emerge from the simple fact that, of 276 million people in North America, only 7 million have French as a mother tongue.

The Government of Canada will, therefore, negotiate with the provinces, upon their request, agreements appropriate to the particular circumstances of each province to define clearly the role of each level of government. Where appropriate, such agreements would be constitutionalized. While these agreements will recognize the important community dimension of culture, and the special responsibilities of the Government of Quebec in this area, the Government of Canada will maintain responsibility for existing Canadian cultural institutions (such as the CBC/Radio Canada, the national museums, the National Film Board, the Canada Council, the National Library, the National Archives, Telefilm and the National Arts Centre) that allow for the expression and dissemination of Canada's identity both within Canada and abroad.

4. *Broadcasting*

Broadcasting is an area of importance both to Canada's identity and to cultural expression. Accountability for regulating the broadcasting sector is appropriately located at the federal level because activities in the field cross

provincial and international boundaries. Nevertheless, there is room to enhance the role of the provinces in this field and eliminate some irritants.

The Government of Canada, therefore, proposes to:

1. consult with the provinces on the issuance of new licences;

2. provide provincial governments and their agents with the opportunity to evolve into full public broadcasting undertakings with varied programming, subject to CRTC regulation;

3. further regionalize the operations of the CRTC and expand the roles of its regional offices;

4. allow for provincial participation in the nomination of regional commissioners of the CRTC.

5. Federal Residual Power

The "Peace, Order and Good Government clause" of section 91 of the Constitution Act, 1867 gives the Parliament of Canada the authority to legislate in three areas: matters of national emergencies; matters of national dimensions; and all other matters not specifically assigned in the Constitution. *The Government of Canada proposes to reserve to itself the Peace, Order and Good Government clause to maintain its authority to deal with national matters and emergencies. However, the Government of Canada is prepared to transfer to the provinces authority for non-national matters not specifically assigned to the federal government under the Constitution or by virtue of court decisions.*

6. Federal Declaratory Power

The declaratory power (section 92(10)(c) of the Constitution Act, 1867) enables the federal government to shift legislative jurisdiction for a "work" from the provinces to the federal government by declaring it to be for the general advantage of Canada. *The Government of Canada proposes an amendment to the Constitution to eliminate the declaratory power.* Its elimination from the Constitution would remove a potential federal-provincial irritant.

7. Recognizing Areas of Provincial Jurisdictions

There are a number of sectors which are more properly the responsibility of the provinces whether or not they are specifically assigned in the Constitution. The federal government is involved in some of these sectors because of its own responsibilities, for example, for international

affairs, for native people and for research and development. In other areas of exclusive provincial jurisdiction, the federal government has intervened in the past primarily through the use of the federal spending power.

The Government is committed to ensuring the preservation of Canada's existing research and development capacity and to maintaining constitutional obligations for international and native affairs. Within this framework, *it is prepared to recognize the exclusive jurisdiction of the provinces in the following areas and to withdraw from these fields in a manner appropriate to each sector and respectful of the provinces' leadership:*

- *tourism*
- *forestry*
- *mining*
- *recreation*
- *housing*
- *municipal/urban affairs*

8. Streamlining Government

The growing complexity of society both within Canada and around the world means that it is not possible to allocate all functions perfectly to different levels of government. There are areas in which governments must work together to achieve common objectives. In other areas, there is a need to eliminate unnecessary overlap and duplication resulting from the expanding role of governments and to reduce the cost of government where possible.

Concern with overlap and duplication in government programs and regulations dates at least as far back as the 1937 Rowell-Sirois Commission. Progress in rationalizing and coordinating the programs of the two senior levels of government has been made through exercises such as the 1978 federal-provincial review and the 1984-85 federal Ministerial Task Force on Program Review.

However, there remains significant room for improvement in rationalizing and harmonizing federal and provincial programs. To avoid the costs and disruptions resulting from overlap and duplication, governments must respect the division of responsibilities and work better together in areas of shared jurisdiction.

The objective is the elimination of unnecessary costs to individuals, to the private sector and to governments. Costs arise from public confusion about which level of government delivers what service and from the administrative burden to clients who must deal with multiple levels of government (and, for example, fill out multiple sets of forms) or who must find ways of dealing with incompatible requirements of different governments. Economic costs occur where federal and provincial objectives

are inconsistent, with a resulting reduction in the effectiveness of both sets of programs.

Administrative Delegation

Administrative delegation is one instrument which can result in significant program rationalization and harmonization. Through administrative delegation, the federal and provincial governments could transfer programs or activities to each other, to local governments, or to the private sector.

With administrative delegation from the federal to other levels of government, for example, program standards would still be set by the federal government but program delivery could vary within general guidelines from jurisdiction to jurisdiction. In this way, administrative delegation would provide an opportunity to improve program efficiency and responsiveness.

Administrative delegation is already used to harmonize and rationalize federal and provincial programs in some areas. For instance, most provinces delegate to the federal government the authority to collect personal and business income tax on their behalf. Federal consumer products inspectors help enforce provincial food standards through administrative agreements. Management of inland fisheries has been delegated to most provinces under administrative agreements.

Legislative Delegation

Another option for rationalizing federal and provincial authority is legislative delegation. This option would require a constitutional amendment which would permit federal and provincial governments to delegate to each other the authority to legislate in a given field. It would allow governments to adapt quickly to changing circumstances or respond to particular conditions. Legislative delegation would not alter the current division of constitutional powers, since the delegating government would retain the authority to revoke any legislation.

This mechanism could be very flexible in its application. Governments could delegate a general area of authority with broad scope for legislation, or a very narrow area with specified constraints that would nonetheless provide for some regulatory flexibility. Delegation arrangements need not be identical with all provinces. Some provinces may be in a better position to enact and implement new authorities than others. Also, if provinces choose not to exercise delegated authorities, federal legislation and regulations would continue to apply. It is for these reasons that the Beaudoin-Edwards Joint Parliamentary Committee, reporting in June 1991, strongly recommended such a constitutional amendment.

The Government of Canada, therefore, supports the insertion in the Constitution of a provision to enable the delegation of legislative authority between the two levels of government with the mutual consent of the legislative bodies involved.

Candidates for Streamlining Proposals

There are many areas where the federal government is prepared to delegate its program delivery responsibilities in order to provide better service to Canadians and/or reduce costs. Other areas would be candidates for rationalizing the involvement of both levels of government. *Therefore, the Government of Canada proposes the following areas as candidates for early discussion with the provinces for either administrative delegation and/or legislative delegation as appropriate in each individual case:*

- *drug prosecutions*
- *wildlife conservation and protection*
- *transportation of dangerous goods*
- *soil and water conservation*
- *ferry services*
- *small craft harbours*
- *some aspects of financial sector regulation*
- *some aspects of bankruptcy law*
- *some aspects of unfair trade practices*
- *inspection programs*

Inspection programs are undertaken in a multitude of areas, including food, drugs, fisheries, labour operations, weights and measures, and transportation. In general, specific inspection activities can be rationalized under either level of government in areas of mutual interest and involvement. In some cases, delegation to provincial governments makes sense while, in other areas, an expanded federal presence is warranted. The federal government is prepared to discuss administrative delegation arrangements in any inspection area with a view to reducing costs both to governments and to the private sector.

3.3 The Federal Spending Power

Providing Canadians with the best level of service possible also requires that the Government address concerns about the use of the federal spending power in areas of provincial responsibility. Federal involvement must not undermine the possibility for provincial governments to carry out the policies desired by their own electorates within the areas of jurisdiction assigned to them.

The federal spending power is not defined in the Constitution, but it has been confirmed very clearly by the Supreme Court. It is inferred from

the federal government's comprehensive taxing power and its control over "the public debt and property."

In practice, the spending power encompasses the expenditures of the federal government in a broad range of areas and in a broad number of forms (for example, Canada-wide shared-cost programs with the provinces, such as health care; bilateral federal-provincial agreements, such as regional development agreements; or federal payments to organizations and individuals, such as Canada Council grants).

The exercise of the federal spending power gives rise to serious and often impassioned debate. Many Canadians regard it as essential for establishing and maintaining basic Canadian norms in social policy. Its proponents — including many in Atlantic Canada — see it, therefore, as a means of bringing about a fair distribution of the benefits of economic union, of dealing with regional disparities and of maintaining an instrument for binding Canada together as a country. Others, by contrast, believe that where the spending power has been used by the federal government to gain entry into an exclusive provincial domain, its exercise is illegitimate. Traditionally, Quebec's requests for federal withdrawal from certain fields have centred on areas of exclusive provincial jurisdiction in which the federal government had intruded through the use of its spending power. Critics also tend to argue that where the powers of the federal and provincial governments overlap, the use of the federal spending power gives rise to duplication, inefficiency, lack of accountability and over-government.

Some of these are valid concerns, as the federal government has acknowledged in constitutional discussions since 1969. To address them, both levels of government need to establish a new set of ground rules for the exercise of the federal spending power. The provincial governments must be given safeguards that alleviate their concerns about federal intervention in their areas of jurisdiction. The federal government must have safeguards that protect its ability to ensure that the consistency and availability of public services across the country are not jeopardized.

The Government of Canada must have the ability to continue making transfer payments to individual Canadians and to organizations. The Government also affirms its intention to continue making grants to provincial governments on the basis of bilateral negotiations, especially in the field of regional development. Continued cooperation with provincial governments is essential to fulfilling the federal responsibility for promoting equal opportunities for the well-being of Canadians, and for furthering economic development to reduce disparities in opportunities.

In response to criticisms about the use of the federal spending power in fields of exclusive provincial jurisdiction, *the Government of Canada commits itself not to introduce new Canada-wide shared-cost programs and conditional transfers in areas of exclusive provincial jurisdiction without the*

approval of at least seven provinces representing 50 percent of the population. This provision would be entrenched in the Constitution. The constitutional amendment would also provide for reasonable compensation to provinces that choose not to participate in the new Canada-wide programs but which establish their own programs meeting the objectives of the new program. Through such a process it should be possible at the outset of any new program to establish both the mechanisms to ensure that Canadians receive the appropriate level of service and the terms and conditions for any change in federal financing for any program approved in this manner.

3.4 Working Together

Effective intergovernmental collaboration will be essential to Canada's future well-being. In many areas, there are *Canadian* objectives that the Government of Canada cannot achieve alone: the provinces have important roles to play. In other areas, there is a need to collaborate and to coordinate different policies and programs. Partly as a consequence, there are currently over 500 intergovernmental conferences and meetings a year, in addition to high-profile First Ministers' Conferences, which touch upon the responsibilities and interests of both the federal and provincial governments.

All federations have found it necessary to create processes and mechanisms to manage the interdependence of governments, for, in practice, federal and provincial functions cannot be placed in watertight compartments. In other federations which have combined parliamentary and federal institutions, this process of collaboration has been achieved primarily through consultation between federal and provincial executives.

Our vast network of intergovernmental consultation has significant achievements to its credit, including the establishment of Canada-wide shared-cost programs and the social safety net of which Canadians are justifiably proud. However, it has not proven to be an effective mechanism of collaboration — there are no decision-making rules and there is no formal process of consultations. At the same time, the current system has attracted much public criticism because of the closed nature of many intergovernmental discussions. These problems take on added significance now that governments are more interdependent than ever before.

The success of Canada's efforts to modernize our federation and the future health of the economic union will depend on the establishment of effective means for governments to work together. We must harness the existing system of executive federalism to improve it and make it more open to public scrutiny and input.

The Government of Canada, therefore, proposes the establishment of a Council of the Federation, composed of federal, provincial and territorial governments, that would meet to decide on issues of intergovernmental coordination and collaboration. The result would be a more publicly visible,

more productive and less confrontational process of intergovernmental relations. The Council would not be another layer of government. The objective of the Council would be to improve the management of the interdependence of government actions inherent in our federal system. Given the importance of intergovernmental collaboration, *the Government of Canada is prepared to entrench the Council in the Constitution.*

The Council of the Federation would have the following mandate:

1. to vote on proposed federal legislation under the proposed new head of power to enhance the functioning of the Canadian economic union;

2. to vote on common guidelines for fiscal harmonization and coordination, and make decisions on improved processes for future collaboration in this area;

3. to make decisions on the use of the federal spending power on new Canada-wide shared-cost programs and conditional transfers in areas of exclusive provincial jurisdiction.

All decisions of the Council of the Federation would require the approval of the federal government and of at least seven provinces representing 50 percent of the population.

This Council must be designed in close collaboration with provincial and territorial governments to maximize the effectiveness of the process. The Special Joint Committee could use the following illustrative membership and procedures for such a Council in its consideration and discussion of this proposal with Canadians and with the provincial and territorial governments:

- the Council would be composed of ministerial representatives from the federal government and each provincial government; governmental representatives could vary depending on the nature of the issues being discussed; territorial representatives would participate as non-voting members;

- representatives would act on behalf of the government they represent, and each of the provincial governments would have one vote;

- the Council would have no permanent staff or headquarters. It would be served by the current resources of the Intergovernmental Secretariat and would meet on a rotating basis in existing federal and provincial facilities.

Proposals

14. Broadening s. 121, the common market clause. The Government of Canada proposes that section 121 of the Constitution Act, 1867 be amended to read as follows:

121. (1) Canada is an economic union within which persons, goods, services and capital may move freely without barriers or restrictions based on provincial or territorial boundaries.

(2) Neither the Parliament or Government of Canada nor the legislatures or governments of the provinces shall by law or practice contravene the principle expressed in subsection (1).

(3) Subsection (2) does not render invalid

(a) a law of the Parliament of Canada enacted to further the principles of equalization or regional development;

(b) a law of a provincial legislature enacted in relation to the reduction of economic disparities between regions wholly within a province that does not create barriers or restrictions that are more onerous in relation to persons, goods, services or capital from outside the province than it does in relation to persons, goods, services or capital from a region within the province; or

(c) a law of the Parliament of Canada or of the legislature of a province that has been declared by Parliament to be in the national interest.

(4) A declaration referred to in paragraph (3) (c) shall have no effect unless it is approved by the governments of at least two-thirds of the provinces that have, in the aggregate, according to the then latest general census, at least 50 percent of the population of all the provinces.

(5) This section shall come into force on July 1, 1995.

15. Power to Manage the Economic Union. The Government of Canada proposes that the following section be added to the Constitution Act, 1867 immediately after section 91:

91A. (1) Without altering any other authority of the Parliament of Canada to make laws, the Parliament of Canada may exclusively make laws in relation to any matter that it declares to be for the efficient functioning of the economic union.

(2) An Act of the Parliament of Canada made under this section shall have no effect unless it is approved by the governments of at least two thirds of the provinces that have, in the aggregate, according to the then latest general census, at least 50 percent of the population of all the provinces.

(3) The legislative assembly of any province that is not among the provinces that have approved an Act of the Parliament of Canada under subsection (2) may expressly declare by resolution supported by 60 percent of its members that the Act of Parliament does not apply in the province.

(4) A declaration made under subsection (3) shall cease to have effect three years after it is made or on such earlier date as may be specified in the declaration.

The Government of Canada also proposes that the Special Joint Committee consider whether the opting-out provision should be renewable.

16. Harmonization of economic policies. The Government of Canada proposes to develop, with the provinces, an annual timetable to allow for more open and visible budget-making processes.

The Government of Canada proposes to develop, with the provinces, guidelines to improve the coordination of fiscal policies and the harmonization of fiscal policies with Canada's monetary policy. Once approved, these guidelines would be set in federal legislation under the new economic union power. Accordingly, these guidelines would require the approval of at least seven of the provinces representing 50 percent of the population, and up to three provinces could opt out.

The Government also proposes to discuss with the provinces the establishment of an independent agency to monitor and evaluate the macroeconomic policies of the federal and provincial governments.

17. Reforms to the Bank of Canada. The Government of Canada proposes to amend the Bank of Canada Act to make it clear that the mandate of the Bank is to achieve and preserve price stability. To ensure regional representation on the Board of Directors of the Bank of Canada, the Government will solicit the views of provincial and territorial governments and consult with them before making appointments to the Board. In addition, the Government proposes to create regional consultative panels to advise the Directors of the Bank on regional economic conditions. The Government will also solicit the views of provincial and territorial governments with respect to the membership of the regional panels. Moreover, the appointment of the Governor of the Bank of Canada would be subject to Senate ratification.

18. Training. The Government of Canada proposes that section 92 of the Constitution Act, 1867 be amended to recognize explicitly that labour market training is an area of exclusive provincial jurisdiction.

19. Immigration. While recognizing the federal role in setting Canadian policy and national objectives with respect to immigration, the Government of Canada is prepared to negotiate with any province agreements appropriate to the circumstances of that province and to constitutionalize those agreements.

20. Culture. The Government of Canada will negotiate with the provinces, upon their request, agreements appropriate to the particular circumstances of each province to define clearly the role of each level of government. Where appropriate, such agreements would be constitutionalized.

21. Broadcasting. The Government of Canada proposes to:

1. consult with the provinces on the issuance of new licences;

2. provide provincial governments and their agents with the opportunity to evolve into full public broadcasting undertakings with varied programming, subject to CRTC regulation;

3. further regionalize the operations of the CRTC and expand the roles of its regional offices;

4. allow for provincial participation in the nomination of regional commissioners of the CRTC.

22. The Residual Power. The Government of Canada proposes to reserve to itself the Peace, Order and Good Government clause of the Constitution Act, 1867 to maintain its authority to deal with national matters or emergencies. However, the Government of Canada is prepared to transfer to the provinces authority for non-national matters not specifically assigned to the federal government under the Constitution or by virtue of court decisions.

23. The Federal Declaratory Power. The Government of Canada is prepared to support a constitutional amendment to remove the declaratory power set out in section 92(10)(c).

24. Recognizing Areas of Provincial Jurisdiction. Within this framework, the Government of Canada is committed to ensuring the preservation of Canada's existing research and development capacity and its obligations for international and native affairs. The Government of Canada is prepared to recognize the exclusive jurisdiction of the provinces and

discuss how best to exercise its own responsibilities in a manner appropriate to the sector in the following areas:

- tourism
- forestry
- mining
- recreation
- housing
- municipal/urban affairs

25. Legislative Delegation. The Government of Canada endorses the recommendation of the Beaudoin-Edwards Joint Parliamentary Committee that there be a constitutional amendment providing for delegation of legislative powers between Parliament and the legislatures, and that there be provisions inserted in the Constitution to enable the delegation of legislative authority between the two levels of government with the mutual consent of the legislative bodies involved.

26. Candidates for Streamlining. In order to provide Canadians with the best service at the lowest possible cost, the federal government is prepared to discuss with the provinces the rationalization of government programs and services by reviewing which level of government can best deliver them. All proposals from the provinces will be considered. As a starting point, the Government proposes to discuss the following areas with the provinces:

- drug prosecutions
- wildlife conservation and protection
- transportation of dangerous goods
- soil and water conservation
- ferry services
- small craft harbours
- some aspects of financial sector regulation
- some aspects of bankruptcy law
- some aspects of unfair trade practices
- inspection programs

27. The Exercise of the Federal Spending Power in Areas of Exclusive Provincial Jurisdiction. The Government of Canada commits itself not to introduce new Canada-wide shared-cost programs and conditional transfers in areas of exclusive provincial jurisdiction without the approval of at least seven provinces representing 50 percent of the population. This undertaking would be entrenched in the Constitution. The constitutional amendment would also provide for reasonable compensation to non-participating provinces which establish their own programs meeting the objectives of the new Canada-wide program.

28. Working Together: a Council of the Federation. The Government of Canada proposes the entrenchment of a Council of the Federation, composed of federal, provincial and territorial governments, that would meet to decide on issues of intergovernmental coordination and collaboration. The Council would have the mandate to vote on proposed federal legislation to enhance the functioning of the economic union under the proposed new head of power; to vote on guidelines for fiscal harmonization and coordination as well as to decide on processes to improve future collaboration in this area; and to make decisions on the use of the federal spending power on new Canada-wide shared-cost programs and conditional transfers in areas of exclusive provincial jurisdiction. All decisions of the Council of the Federation would require the approval of the federal government and of at least seven provinces representing 50 percent of the population.

Conclusion
How Do We Get There?

> If we had not felt that, after coming to this conclusion, we were bound to set aside our private opinions on matters of detail, if we had not felt ourselves bound to look at what was practicable, not obstinately rejecting the opinions of others nor adhering to our own; if we had not met, I say, in a spirit of conciliation, and with an anxious, overruling desire to form one people under one government, we never would have succeeded.
>
> Sir John A. Macdonald, 1865

Canadians everywhere care deeply about Canada, and about the advantages and opportunities that Canadian citizenship offers.

We have the chance today to make our country even better — to make our institutions more responsive, our economy more prosperous, our political arrangements more effective, our governments more accountable. We have the chance to recognize and express the character of our many different identities. We have an opportunity to rediscover our purpose together and, in doing so, to move forward as a people.

The proposals advanced by the Government of Canada in this paper have been developed to respond to concerns expressed by Canadians from all walks of life. Canada's aboriginal peoples, who were ignored in the original bargain of Confederation and have been ignored too often since, make up one of those constituencies. Another is those who feel strongly that the original bargain has not been fully respected: many Quebecers who believe that Canada has not lived up to its original commitment to respect their distinctiveness; and Atlantic Canadians whose average incomes continue to trail substantially behind those of other Canadians after 125 years. Western Canadians have tended in recent years to question the responsiveness of national institutions that reflect only marginally the regional nature of our country. There is also a larger constituency — the many Canadians who feel that the bargain has not been sufficiently updated to meet our changing needs. They believe that the terms of our union should be transformed — just as Canada has been transformed — to keep pace with changing social patterns, new economic realities, and changing values.

These proposals are being put forward in a spirit of openness, and in the hope of renewal for this country. They are intended to be comprehensive, but not inflexible. They are offered with the intention of prompting a broad, informed and specific public debate. The Government is now inviting the people of Canada to participate in the process of building a new consensus for Canada, a consensus that can be made real through amendments to our Constitution, through agreements between governments and through changes to the way in which our institutions serve us.

These proposals will be referred to a Special Joint Committee. This committee has a mandate to travel widely within Canada, to speak with Canadians and with their provincial and territorial representatives from coast to coast to coast. Every Canadian will have the right — and the responsibility — to participate. The Committee will make its report in early 1992. Upon receiving the report, the Government will propose a plan for a renewed Canada, for Parliament's consideration.

The Government believes that, at the end of this national debate, we will understand ourselves better and appreciate our country more fully. Compromise and tolerance will be required of all of us, but we will build on a foundation of values and institutions that we care about and that will not change. And we will have worked together toward a vision of the country that we can all share, reflected in our Constitution.

Appendix I
List of Proposals

Part I: Shared Citizenship and Diversity

1. Reaffirming the rights and freedoms of citizens. The Government of Canada reaffirms the basic rights set out in the Charter as a fundamental feature of the Canadian Constitution. The Government of Canada proposes that the Canadian Charter of Rights and Freedoms be amended to guarantee property rights. The Government of Canada further proposes that the votes necessary for Parliament or a provincial legislature to invoke the override (section 33) be changed from a simple majority to 60 percent of the members of Parliament or the provincial legislature.

2. Recognition of Quebec's distinctiveness and Canada's linguistic duality. The Government of Canada proposes that a section be included in the Charter stating that the Charter of Rights and Freedoms shall be interpreted in a manner consistent with the recognition of Quebec as a distinct society within Canada. The section would read:

25.1 (1) This Charter shall be interpreted in a manner consistent with

(a) the preservation and promotion of Quebec as a distinct society within Canada; and

(b) the preservation of the existence of French-speaking Canadians, primarily located in Quebec but also present throughout Canada, and English-speaking Canadians, primarily located outside Quebec but also present in Quebec.

(2) For the purposes of subsection (1), "distinct society", in relation to Quebec, includes

(a) a French-speaking majority;
(b) a unique culture; and
(c) a civil law tradition.

3. Aboriginal participation in current constitutional deliberations. The Government of Canada is committed to ensuring that aboriginal peoples participate in the current constitutional deliberations.

4. Aboriginal self-government. The Government of Canada proposes an amendment to the Constitution to entrench a general justiciable right to aboriginal self-government within the Canadian federation and subject to the Canadian Charter of Rights and Freedoms, with the nature of the right to self-government described so as to facilitate interpretation of that right by the courts. In order to allow an opportunity for the Government of Canada, the governments of the provinces and the territories, and aboriginal peoples to come to a common understanding of the content of this right, its enforceability would be delayed for a period of up to 10 years. The Special Joint Committee should examine the broad parameters of the right to be entrenched in the Constitution and the jurisdictions that aboriginal governments would exercise.

5. Aboriginal constitutional process. The Government of Canada proposes the entrenchment of a constitutional process to address aboriginal matters that are not dealt with in the current constitutional deliberations and to monitor progress made in the negotiations of self-government agreements.

6. Representation of aboriginal peoples in the Senate. The Government of Canada proposes that aboriginal representation should be guaranteed in a reformed Senate.

7. A Canada clause in the Constitution. The Government of Canada proposes that a "Canada clause" that acknowledges who we are as a people, and who we aspire to be, be entrenched in section 2 of the Constitution Act, 1867. The Government of Canada believes that it would be appropriate for the following characteristics and values to be reflected in such a statement:

- a federation whose identity encompasses the characteristics of each province, territory and community;
- the equality of women and men;
- a commitment to fairness, openness and full participation in Canada's citizenship by all people without regard to race, colour, creed, physical or mental disability, or cultural background;
- recognition that the aboriginal peoples were historically self-governing, and recognition of their rights within Canada;
- recognition of the responsibility of governments to preserve Canada's two linguistic majorities and minorities;
- the special responsibility borne by Quebec to preserve and promote its distinct society;
- the contribution to the building of a strong Canada of peoples from many cultures and lands;

- the importance of tolerance for individuals, groups and communities;
- a commitment to the objective of sustainable development in recognition of the importance of the land, the air and the water and our responsibility to preserve and protect the environment for future generations;
- respect for the rights of its citizens and constituent communities as set forth in the Canadian Charter of Rights and Freedoms;
- the free flow of people, goods, services and capital throughout the Canadian economic union and the principle of equality of opportunity throughout Canada;
- a commitment to the well-being of all Canadians;
- a commitment to a democratic parliamentary system of government;
- the balance that is especially Canadian between personal and collective freedom on the one hand and, on the other hand, the personal and collective responsibility that we all share with each other.

Part II: Responsive Institutions for a Modern Canada

*8. **House of Commons.*** The Government of Canada commits itself to a process of further parliamentary reform to give individual MPs more free votes and to reduce the application of votes of confidence.

*9. **Principles of Senate reform: an elected, effective and more equitable Senate**.* The Government of Canada proposes that:

- the Senate be directly elected;
- Senate elections coincide with elections to the House of Commons;
- the Senate's composition provide for much more equitable provincial and territorial representation than at present;
- the House of Commons remain the primary legislative body;
- as a general rule, in order for measures to become law, approval of both the Senate and the House of Commons should be required as at present;

- for matters of language and culture, the Senate would also have a double majority special voting rule;

- for matters of national importance, such as national defence and international issues, the Senate would have a six-month suspensive veto. Following expiry of the suspensive veto, the House of Commons would be required to repass the legislation for it to become law;

- since the Senate is not a confidence chamber, the Senate would have no legislative role in relation to appropriation bills and measures to raise funds including borrowing authorities;

- guaranteed representation be provided for aboriginal Canadians in the Senate;

- the Senate continue to have a mandate to conduct special inquiries into issues of public policy.

10. Details of Senate reform. The Government of Canada proposes that the Special Joint Committee of Parliament consider the following issues:

- the form of direct election to the Senate;

- the appropriate number and distribution of Senate seats;

- in consultation with the aboriginal peoples, the appropriate representation of Canada's First Peoples.

11. Senate Ratification of Appointments to Regulatory Boards and Agencies. The Government of Canada proposes that the Senate be given a mandate to ratify the appointment of the Governor of the Bank of Canada and the appointments of the heads of national cultural institutions, such as the Canadian Broadcasting Corporation, the National Film Board, the National Library, the National Archives, the national museums, the Canadian Film Development Corporation, the Canada Council and the National Arts Centre, as well as the heads of regulatory boards and agencies such as the National Energy Board, the National Transportation Agency, the Canadian Radio-television and Telecommunications Commission, the Immigration and Refugee Board, and the proposed Canadian Environmental Assessment Agency.

12. Appointments to the Supreme Court of Canada. The Government of Canada will introduce a constitutional amendment to provide for a role for the provinces and the territories in Supreme Court appointments whereby appointments would be made by the federal government from lists of nominees submitted by provincial and territorial governments, the individual appointed being acceptable to the Queen's Privy Council of Canada.

In addition, the Government of Canada would be prepared to proceed with the entrenchment in the Constitution of the Supreme Court and its composition if it were found desirable to proceed with any unanimity items in the final package.

13. The Constitutional Amending Formula. The Government of Canada would be prepared to proceed with changes to the amending formula as specified in the Meech Lake Accord if a consensus on this matter were to develop; if the accession of existing territories to provincehood were to proceed on the basis of the current amending formula; and if it were found desirable to proceed ultimately with any items requiring unanimous consent in the final package.

Part III: Preparing for a more Prosperous Future

14. Broadening s. 121, the common market clause. The Government of Canada proposes that section 121 of the Constitution Act, 1867 be amended to read as follows:

121. (1) Canada is an economic union within which persons, goods, services and capital may move freely without barriers or restrictions based on provincial or territorial boundaries.

(2) Neither the Parliament or Government of Canada nor the legislatures or governments of the provinces shall by law or practice contravene the principle expressed in subsection (1).

(3) Subsection (2) does not render invalid

(a) a law of the Parliament of Canada enacted to further the principles of equalization or regional development;

(b) a law of a provincial legislature enacted in relation to the reduction of economic disparities between regions wholly within a province that does not create barriers or restrictions that are more onerous in relation to persons, goods, services or capital from outside the province than it does in relation to persons, goods, services or capital from a region within the province; or

(c) a law of the Parliament of Canada or of the legislature of a province that has been declared by Parliament to be in the national interest.

(4) A declaration referred to in paragraph (3) (c) shall have no effect unless it is approved by the governments of at least two-

thirds of the provinces that have, in the aggregate, according to the then latest general census, at least 50 percent of the population of all the provinces.

(5) This section shall come into force on July 1, 1995.

15. Power to Manage the Economic Union. The Government of Canada proposes that the following section be added to the Constitution Act, 1867 immediately after section 91:

91A. (1) Without altering any other authority of the Parliament of Canada to make laws, the Parliament of Canada may exclusively make laws in relation to any matter that it declares to be for the efficient functioning of the economic union.

(2) An Act of the Parliament of Canada made under this section shall have no effect unless it is approved by the governments of at least two thirds of the provinces that have, in the aggregate, according to the then latest general census, at least 50 percent of the population of all the provinces.

(3) The legislative assembly of any province that is not among the provinces that have approved an Act of the Parliament of Canada under subsection (2) may expressly declare by resolution supported by 60 percent of its members that the Act of Parliament does not apply in the province.

(4) A declaration made under subsection (3) shall cease to have effect three years after it is made or on such earlier date as may be specified in the declaration.

The Government of Canada also proposes that the Special Joint Committee consider whether the opting-out provision should be renewable.

16. Harmonization of economic policies. The Government of Canada proposes to develop, with the provinces, an annual timetable to allow for more open and visible budget-making processes.

The Government of Canada proposes to develop, with the provinces, guidelines to improve the coordination of fiscal policies and the harmonization of fiscal policies with Canada's monetary policy. Once approved, these guidelines would be set in federal legislation under the new economic union power. Accordingly, these guidelines would require the approval of at least seven of the provinces representing 50 percent of the population, and up to three provinces could opt out.

The Government also proposes to discuss with the provinces the establishment of an independent agency to monitor and evaluate the macroeconomic policies of the federal and provincial governments.

17. Reforms to the Bank of Canada. The Government of Canada proposes to amend the Bank of Canada Act to make it clear that the mandate of the Bank is to achieve and preserve price stability. To ensure regional representation on the Board of Directors of the Bank of Canada, the Government will solicit the views of provincial and territorial governments and consult with them before making appointments to the Board. In addition, the Government proposes to create regional consultative panels to advise the Directors of the Bank on regional economic conditions. The Government will also solicit the views of provincial and territorial governments with respect to the membership of the regional panels. Moreover, the appointment of the Governor of the Bank of Canada would be subject to Senate ratification.

18. Training. The Government of Canada proposes that section 92 of the Constitution Act, 1867 be amended to recognize explicitly that labour market training is an area of exclusive provincial jurisdiction.

19. Immigration. While recognizing the federal role in setting Canadian policy and national objectives with respect to immigration, the Government of Canada is prepared to negotiate with any province agreements appropriate to the circumstances of that province and to constitutionalize those agreements.

20. Culture. The Government of Canada will negotiate with the provinces, upon their request, agreements appropriate to the particular circumstances of each province to define clearly the role of each level of government. Where appropriate, such agreements would be constitutionalized.

21. Broadcasting. The Government of Canada proposes to:

1. consult with the provinces on the issuance of new licences;

2. provide provincial governments and their agents with the opportunity to evolve into full public broadcasting undertakings with varied programming, subject to CRTC regulation;

3. further regionalize the operations of the CRTC and expand the roles of its regional offices;

4. allow for provincial participation in the nomination of regional commissioners of the CRTC.

22. The Residual Power. The Government of Canada proposes to reserve to itself the Peace, Order and Good Government clause of the Constitution Act, 1867 to maintain its authority to deal with national matters or emergencies. However, the Government of Canada is prepared to transfer to the provinces authority for non-national matters not specifically assigned to the federal government under the Constitution or by virtue of court decisions.

23. The Federal Declaratory Power. The Government of Canada is prepared to support a constitutional amendment to remove the declaratory power set out in section 92(10)(c).

24. Recognizing Areas of Provincial Jurisdiction. Within this framework, the Government of Canada is committed to ensuring the preservation of Canada's existing research and development capacity and its obligations for international and native affairs. The Government of Canada is prepared to recognize the exclusive jurisdiction of the provinces and discuss how best to exercise its own responsibilities in a manner appropriate to the sector in the following areas:

- tourism
- forestry
- mining
- recreation
- housing
- municipal/urban affairs

25. Legislative Delegation. The Government of Canada endorses the recommendation of the Beaudoin-Edwards Joint Parliamentary Committee that there be a constitutional amendment providing for delegation of legislative powers between Parliament and the legislatures, and that there be provisions inserted in the Constitution to enable the delegation of legislative authority between the two levels of government with the mutual consent of the legislative bodies involved.

26. Candidates for Streamlining. In order to provide Canadians with the best service at the lowest possible cost, the federal government is prepared to discuss with the provinces the rationalization of government programs and services by reviewing which level of government can best deliver them. All proposals from the provinces will be considered. As a starting point, the Government proposes to discuss the following areas with the provinces:

- drug prosecutions
- wildlife conservation and protection
- transportation of dangerous goods
- soil and water conservation

- ferry services
- small craft harbours
- some aspects of financial sector regulation
- some aspects of bankruptcy law
- some aspects of unfair trade practices
- inspection programs

*27. **The Exercise of the Federal Spending Power in Areas of Exclusive Provincial Jurisdiction.*** The Government of Canada commits itself not to introduce new Canada-wide shared-cost programs and conditional transfers in areas of exclusive provincial jurisdiction without the approval of at least seven provinces representing 50 percent of the population. This undertaking would be entrenched in the Constitution. The constitutional amendment would also provide for reasonable compensation to non-participating provinces which establish their own programs meeting the objectives of the new Canada-wide program.

*28. **Working Together: a Council of the Federation.*** The Government of Canada proposes the entrenchment of a Council of the Federation, composed of federal, provincial and territorial governments, that would meet to decide on issues of intergovernmental coordination and collaboration. The Council would have the mandate to vote on proposed federal legislation to enhance the functioning of the economic union under the proposed new head of power; to vote on guidelines for fiscal harmonization and coordination as well as to decide on processes to improve future collaboration in this area; and to make decisions on the use of the federal spending power on new Canada-wide shared-cost programs and conditional transfers in areas of exclusive provincial jurisdiction. All decisions of the Council of the Federation would require the approval of the federal government and of at least seven provinces representing 50 percent of the population.